

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

BNSF Railway Company

RE: BNSF Track Switching Facility
(aka Wishram Railyard, FSID 1625461)
500 Main Street
Wishram, WA 98673

AGREED ORDER

No. DE 12897

TO: Mr. Bruce Sheppard for BNSF Railway Company
2454 Occidental Avenue S, Suite 1A
Seattle, WA 98134-1451

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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. This Order requires BNSF to conduct a Remedial Investigation and Feasibility Study, and to prepare a Draft Cleanup Action Plan, for the BNSF Track Switching Facility Site generally located at 500 Main Street, Wishram, WA 98673. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to 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 this 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 RCW 70.105D and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as BNSF Track Switching Facility (aka Wishram Railyard, Facility Site ID No. 1625461), and is generally located at 500 Main Street, Wishram Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is generally

described in the Site Diagram (Exhibit A). The Site constitutes a facility under RCW 70.105D.020(8).

B. Parties: Refers to the State of Washington, Department of Ecology and BNSF.

C. Potentially Liable Person (PLP): Refers to BNSF.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order.

All exhibits are integral and enforceable parts of this Order. The terms “Agreed Order” or “Order” shall include all exhibits to this Order.

V. FINDINGS OF FACT

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

A. The Wishram railyard was built by the Spokane, Portland and Seattle Railway between 1910 and 1912. The railyard was historically used for railcar switching conducted on about 35 track spurs that extended from the eastern end of the railyard to the former engine house. Most of the track spurs and structures no longer remain. The railyard is approximately 2,000 feet long, ranges from 150 to 720 feet wide, and encompasses approximately 20 acres, including land no longer occupied by BNSF. The Site is approximately three (3) acres.

B. The Wishram railyard is located on the shores of the Columbia River within a treaty usual and accustomed fishing area of the Confederated Tribes and Bands of the Yakama Nation. Tribal members still exercise treaty reserved fishing rights on the shores of or in the Columbia River in the direct vicinity of the railyard. This fishing activity is regulated under tribal laws through off-reservation enforcement authority. The Celilo Treaty Fishing Access Site, a tribal fishing boat launch area regulated by the Bureau of Indian Affairs, is situated directly across the Columbia River on the Oregon shore. Fisheries in this area of the main stem Columbia River (designated “Zone 6”) are co-managed among the Yakama Nation and the states of Washington and Oregon under a 2008 U.S. District Court order.

C. Fueling of locomotives occurred for approximately 60 years since establishment of the railyard. Initially, heavy oil (Bunker C) was used to fuel the locomotives and the former

powerhouse that generated steam to power the railyard. The use of fuel oil was phased out during the late 1940s or early 1950s with a switchover to diesel.

D. In 1957, the water level of the Columbia River adjacent to the railyard rose by approximately 40 feet after completion of the Dalles Dam which thereby changed the groundwater regime.

E. The powerhouse was demolished between 1956 and 1960. Diesel fueling continued onsite from the late 1940s to the late 1970s at either a fueling island or fuel spur. Fueling activities ceased during the late 1970s.

F. In 2002, a 30,000 gallon diesel and heating oil underground storage tank located west of the former boiler house was removed along with approximately 750 tons of petroleum-contaminated soils (PCS).

G. In 2003, BNSF's environmental consultant, Kennedy/Jenks Consultants performed an underground storage tank (UST) assessment.

H. In 2004, Kennedy/Jenks completed a site assessment to characterize soil and groundwater quality in and downgradient of locations where historical operations were performed.

I. In 2005, approximately 3,600 tons of PCS and debris were excavated and disposed offsite. This removal action was associated with an UST and its piping system.

J. In 2010, additional subsurface investigations were performed to identify potential sources and distribution of light non-aqueous phase liquid (LNAPL) in the vicinity of MW-7, north of the mainline railroad tracks. This action also saw the excavation and offsite disposal of approximately 630 tons of PCS, concrete, and wood debris associated with a former above ground storage tank (AST).

K. In 2012, additional subsurface investigations were performed to characterize the distribution of diesel and heavy oil at locations both north and south of the mainline tracks. Additional delineation of diesel range organics (DRO) was completed along with the identification of heavy oil range (HRO)-affected areas, south of the mainline tracks. Also, an air sparge/soil vapor extraction (AS/SVE) remediation system was installed north of the mainline. The AS/SVE

system was designed to address residual DRO that could not be recovered through soil removal activities.

L. In July 2013, a laser-induced fluorescence (LIF) survey was conducted to evaluate hydrocarbon NAPL distribution and to determine depth to bedrock. The LIF survey included installation of 102 LIF probes in transects having a horizontal spacing ranging from approximately 12 feet to 50 feet. Each LIF probe was installed to the bedrock surface, which ranged in depth from approximately 25 feet below grade to over 85 feet below grade.

M. In July 2013, oil droplets and oil sheen were observed along the shallow water bank of Lake Celilo/Columbia River. During inspection of the bank at that time, tar-like nodules were also observed. The oil droplets, sheen, and tar-like nodules were observed in the locations depicted in Exhibit A. The sheen was reported to Ecology as ERTS No. 642572. The source was not conclusively identified.

N. In November 2013, monthly river bank monitoring began. For the period from November 2013 to June 2014, there were no oil droplets or sheen observed by BNSF or Ecology.

O. On July 21, 2014, additional subsurface investigations of hydrocarbon distribution were performed in the upland area to assess the potential for migration pathways to the river. To date, over 60 borings have been completed and eight groundwater monitoring wells have been sampled routinely on a semiannual basis.

P. During the period from July 21 through 25, 2014, and on July 29, 2014, oil droplets and oil sheen were again observed along the shallow water bank of Lake Celilo/Columbia River in the near vicinity of the railyard. Tar-like nodules were also observed on the bank. The oil droplets, sheen and tar-like nodules were observed in the locations depicted in Exhibit A. The sheen was reported to Ecology as ERTS No. 650872. Sheen similar to prior observations was observed on June 26, 2015 and reported to Ecology. BNSF is continuing its routine river bank monitoring, and will, as required by the Scope of Work, report any further observations of sheen or droplets to Ecology.

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by BNSF.

A. BNSF is an “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8).

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(32) and (13), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to BNSF dated October 20, 2014, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, receiving none, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that BNSF is a PLP under RCW 70.105D.040 and notified BNSF of this determination by letter dated December 3, 2014.

D. 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.

E. 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 plan. Either party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.J. If the Parties are not in agreement, Ecology

reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action itself.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that BNSF perform remedial actions at the Site as described in Exhibit B (Scope of Work), and that these actions be conducted in accordance with WAC 173-340 unless otherwise specifically provided for herein. The remedial actions are summarized as follows:

A. BNSF shall perform a Remedial Investigation and Feasibility Study to address data gaps required to refine the conceptual site model and provide sufficient information to select a remedial option among the alternatives identified.

B. BNSF shall conduct monthly monitoring of the shallow river bank adjacent to the Site and, in the event of observed oil droplets or sheen, provide reporting to Ecology and other response actions as described more specifically in Exhibit B. Monitoring will be required from the Effective date of this Agreed Order until otherwise directed by Ecology.

C. BNSF will submit for Ecology's review, within 60 days of the effective date of this Order, a draft Remedial Investigation (RI) work plan, including a detailed schedule. This submission will also include a combined draft Sampling and Analysis Plan and Quality Assurance Project Plan (SAP/QAPP) and a site Health and Safety Plan (HASP) for Ecology's review per WAC 173-340-350(7)(c)(iv). The documents must conform to the requirements specified in WAC 173-340-810 (Worker Safety and Health), and 173-340-820 (Sampling and Analysis Plans).

D. BNSF will submit for Ecology approval, within 45 days of BNSF's receipt of Ecology's comments on the draft RI work plan, schedule, SAP/QAPP and HASP, revised documents that address Ecology's comments. Upon approval by Ecology, the RI work plan, detailed schedule, SAP/QAPP, and HASP are considered final and become integral and enforceable parts of this Order.

E. BNSF will conduct RI field work in accordance with the Ecology-approved final RI work plan, detailed schedule, SAP/QAPP, and HASP.

F. BNSF will submit for Ecology's review, within 120 days of BNSF's receipt of the final validated analytical data from the final phase of sampling, a draft RI Report and draft Feasibility Study conforming to WAC 173-340-350. BNSF will submit, within 45 days of BNSF's receipt of Ecology's comments, a revised RI Report and revised Feasibility Study (FS) addressing Ecology's comments.

G. BNSF will submit, within 60 days of Ecology's written approval of the revised RI and revised FS, a draft Cleanup Action Plan (CAP) to Ecology, conforming to WAC 173-340-380(1) (Cleanup Action Plan).

H. BNSF will submit monthly progress reports to Ecology's project coordinator via email or mail. These reports will be submitted on or by the 15th of the month for work performed the previous month. BNSF will continue to submit monthly progress reports until BNSF submits the draft RI/FS. Document submissions must be approved by Ecology and are not final until approved. Emergency situations and any conditions significantly delaying work must be reported to Ecology within 24 hours.

I. All plans or other deliverables submitted by BNSF for Ecology's review and approval under the Schedule of Deliverables or Action Required (Exhibit C) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

J. If the Parties agree on an interim action under Section VI.E, BNSF shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). BNSF shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and BNSF is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

K. If Ecology determines that BNSF has failed to make sufficient progress or failed to implement the remedial action required under this Order, in whole or in part, Ecology may, after

notice to BNSF, perform any or all portions of the remedial action that remain incomplete or at Ecology's discretion allow BNSF opportunity to correct. BNSF shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

L. 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.

VIII. TERMS AND CONDITIONS

A. 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 RCW 70.105D, including remedial actions and Order oversight and administration. These costs shall include work performed subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). BNSF shall pay the required amount within thirty (30) 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 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.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

B. Designated Project Coordinators

The project coordinator for Ecology is:

John Mefford
Department of Ecology – Central Regional Office
1250 W. Alder St.
Union Gap, WA 98903
john.mefford@ecy.wa.gov
509-454-7836

The project coordinator for PLP is:

Bruce Sheppard
BNSF Railway Company
2454 Occidental Avenue S, Suite 1A
Seattle, WA 98134-1451
Bruce.Sheppard@bnsf.com
206-625-6035

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's 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 coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed under this Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

C. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

BNSF shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s) to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

D. Access

Ecology or any Ecology authorized representative shall have access 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. For access to the facility necessary for any activity related to the terms of this Order, BNSF agrees to facilitate such access. All persons who access the Site pursuant to this section shall be escorted by BNSF personnel (or their designees) and shall comply with any applicable health and

safety plan(s). Ecology recognizes that the property at the Site shall be used in such a manner as not to be a source of danger to or to unreasonably interfere with the existence or use of tracks, roadbed, or property of BNSF. If an emergent source of danger or unreasonable interference with railway operations occurs, Ecology will cease using the affected property at the Site when requested by BNSF's personnel. Ecology's agreement to temporarily cease using the property shall not limit Ecology's authority to conduct further remedial actions pursuant to any applicable state law. Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

E. 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 Ecology and/or its authorized representative to take split or duplicate samples 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 BNSF and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.D (Access), Ecology shall notify BNSF seven (7) days 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 WAC 173-50 for the specific analysis to be conducted, unless otherwise approved by Ecology.

F. Public Participation

A Public Participation Plan has been prepared for this Site. Ecology shall maintain the responsibility for public participation at the Site. However, BNSF shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing lists and 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's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify BNSF prior to the issuance of all press releases and fact sheets, and before major 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. Goldendale Public Library
131 West Burgen
Goldendale, WA 98620
(509) 773-4487

- b. Ecology's Central Regional Office
1250 W. Alder Street
Union Gap, WA 98903-0009
(509) 575-2490

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Central Regional Office in Union Gap, Washington.

G. 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 to waive any right BNSF may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If BNSF withholds any requested records based on an assertion of privilege, BNSF shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

H. Resolution of Disputes

1. In the event that BNSF elects to invoke dispute resolution BNSF must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), BNSF has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute ("Informal Dispute Notice").

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision ("Informal Dispute Decision") stating: the nature of the dispute; BNSF's position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. BNSF may then request regional management review of the dispute. This request ("Formal Dispute Notice") must be submitted in writing to the Central Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute ("Decision on Dispute") within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute 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.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII. K (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. 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:

- 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 may include, but may not be 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;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.K (Endangerment).

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 of any extensions granted pursuant to this 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.J (Amendment of Order) 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; or
- c. Endangerment as described in Section VIII.K (Endangerment).

J. 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.L (Reservation of Rights), 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 this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

K. Endangerment

In the event Ecology determines that any activity being performed at the Site under this Order 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.

In the event BNSF determines that any activity being performed at the Site under this Order 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 in accordance with Section VIII.I (Extension of Schedule) 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.

L. Reservation of Rights

This Order is not a settlement under RCW 70.105D. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's 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 RCW 70.105D, 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 any injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

By entering into this Order, BNSF does not admit to any liability for the Site. Although BNSF is committing to conducting the work required by this Order under the terms of this Order, BNSF expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

M. 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 notify all transferees of any restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

N. 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. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), BNSF is exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, BNSF shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

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.

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 that 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.

O. 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 (1) for death or injuries to persons, or (2) 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 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 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:

- A. The Attorney General may bring an action to enforce this Order in a state or federal 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. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:
 - 1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.
 - 2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.
- D. 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.

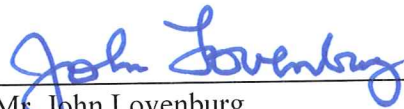
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Effective date of this Order: October 7, 2015

BNSF Railway Company



Mr. John Lovenburg
Vice President, Environmental
for BNSF Railway Company
2500 Lou Menk Dr., AOB-3
Fort Worth, TX 76131
Telephone: 817-352-1459

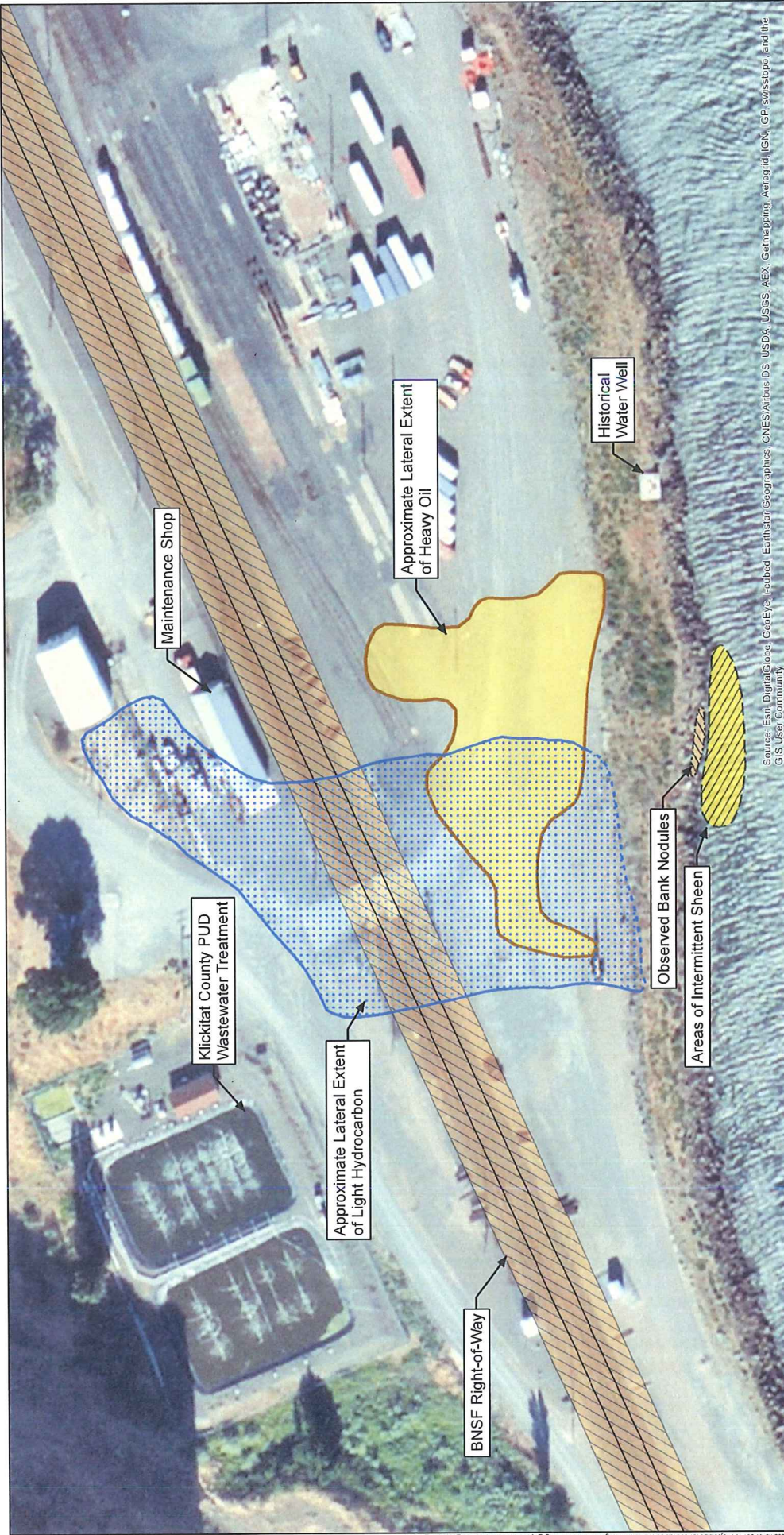
STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Valerie Bound
Section Manager
Toxics Cleanup Program
Central Regional Office
Telephone: 509-454-7886

EXHIBIT A

Site Diagram



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroX, GeoMapping, AeroGRID, IGN, IGP, Swirestop, and the GIS User Community

Kennedy/Jenks Consultants

Wisham, Washington

Site Diagram

Exhibit A

KJ Project Number 1496120.00

Notes:

1. All locations are approximate.
2. Oil sheen observations were made in July 2013, July 2014, and June 2015.
3. Monthly river bank observations performed starting November 2013.
4. Distribution of heavy oil and light hydrocarbon is based on LIF survey and other results.

Legend

- Mainline Railroad Tracks
- BNSF Right-of-Way
- Approximate Lateral Extent of Light Hydrocarbon
- Approximate Lateral Extent of Heavy Oil
- Observed Bank Nodules
- Area of Intermittent Sheen

EXHIBIT B

Scope of Work (SOW)

EXHIBIT B

Scope of Work (SOW)

BNSF has been undertaking remedial investigation and independent cleanup activities at the BNSF Track Switching Facility (aka Wishram Railyard) site since 2003. This Scope of Work details the major tasks and associated subtasks required under the Agreed Order, including conducting continued monitoring, completing a Remedial Investigation to further characterize site conditions, preparing a Remedial Investigation and Feasibility Study report, preparing a Draft Cleanup Action Plan, and, if agreed by the parties, conducting interim action.

Work performed under this Agreed Order will be governed by Ecology's regulations for implementing the Model Toxics Control Act. The regulations generally applicable to the work are as follows. WAC 173-340-350 (Remedial Investigation and Feasibility Study) broadly describes the elements necessary to complete a RI/FS. The purpose of the RI/FS is to collect, develop, and evaluate sufficient information regarding the site to select a cleanup action under WAC 173-34-360 through 173-340-390. Other applicable provisions are provided in Part VIII (General Provisions) of WAC 173-340. WAC 173-340-380 (Cleanup Action Plan) describes the necessary elements of a Cleanup Action Plan. WAC 173-340-430 describes the purpose, requirements and process for interim actions.

The specific tasks required under the Agreed Order are as follows.

Task 1: Continue Monitoring and Reporting

- A. Increased River Bank Monitoring. Continue monitoring current river bank conditions by performing a monthly inspection along a 200-foot long stretch of the shallow water river bank of the Columbia River where oil-droplets and oil sheen have been previously observed. Inspections will also be conducted i) when Kennedy/Jenks Consultants or BNSF environmental personnel are onsite for other purposes and ii) following two substantial storm events to evaluate conditions during times of increased infiltration that may lead to increased ground-to-surface water discharge. A log of observations, including photographs, will be maintained for each inspection event. Monitoring will be required from the Effective date of the Agreed Order until otherwise directed by Ecology.

B. Reporting and Response. In the event that any oil sheen is observed along the river bank:

- i. Notification will be provided to Ecology immediately;
- ii. Inspections will begin being conducted on a daily basis (during normal work days) until the condition subsides or the parties otherwise agree to a different frequency;
- iii. BNSF will attempt to collect a sample of the oil for characterization; and
- iv. BNSF will confer with Ecology as to whether precautionary actions (such as placement of adsorbent boom material that shall be stored at the Wishram Railyard) are warranted to prevent possible migration of the material to other areas.

Task 2: Develop RI Work Plan

A RI work plan will be prepared in accordance with WAC 173-304 (including relevant sections of WAC 173-340-820 and -830). The RI Work Plan will address the field activities described in Task 3 below, and will include the following sections:

A. Introduction and Background consisting of:

- i. Site description and history.
- ii. General geology and hydrogeology of the Site area.
- iii. Summary of previous remedial investigations and independent cleanup activities.
- iv. Site diagram(s), updated to include locations of above ground features such as buildings and subsurface features including utilities, petroleum product tanks and associated piping system; property lines, boring locations, monitoring wells and elevations. All maps will be consistent with the requirements set forth in WAC 173-340-840(4) and be of sufficient detail and accuracy to locate and report all current and future work performed at the Site.
- v. Preliminary Conceptual Site Model, including preliminary identification of compounds of concern (COC), exposure pathways, receptors, and potential cleanup standards.

B. RI Objectives and Approach

- i. Evaluation of the nature and extent of contamination to include fate and transport of the contaminants
- ii. Evaluation of exposure pathways to receptors
- iii. Evaluation of sufficiency of previous site assessment work, primarily at the east side of the site.
- iv. Evaluation of composition and saturation of Non-Aqueous Phase Liquid (NAPL) and dissolved components of NAPL in groundwater.

C. RI Field Activities

- i. Soil Investigations
- ii. Groundwater Investigations
- iii. Field procedures
- iv. Laboratory Analyses
- v. Decontamination Procedures
- vi. Control of Investigation-Derived Wastes

D. Detailed Schedule and Reporting, including process for reporting initial results, identifying additional data gaps, and, in consultation with Ecology, developing work plans for subsequent phases of RI field work or developing plans for any interim action that the parties may agree upon pursuant to Sections VI.E and VII.J of the Agreed Order. Work plans for subsequent phases of RI field work will be prepared as modifications or addendums to the Final Supplemental RI Work Plan.

E. Appendices, including:

- i. Site Health and Safety Plan (HASP) prepared in accordance with WAC 173-340-810 and applicable federal regulations.
- ii. Sampling and Analysis Plan / Quality Assurance Project Plan (SAP/QAPP) prepared in accordance with WAC 173-340-820.

Task 3: Perform RI Field Investigation

- A. Nodule Sampling. A sample of the tar-like nodules observed along the rip/rap bank will be collected. If adequate sample volume can be collected, it will be submitted for the following analyses (in the following order of priority):
 - i. Diesel and oil-range petroleum hydrocarbons using the NWTPH-Dx Method.
 - ii. Extractable Range Petroleum Hydrocarbons (EPH).
 - iii. Polycyclic aromatic hydrocarbons (PAHs) using EPA Method 8270C.
- B. Field mapping of the nodule presence will be performed to further evaluate their location and distribution along the rip/rap bank.
- C. Focused Upland Site Characterization. Site characterization is in progress and will focus initially on the presence and mobility of NAPL and on the distribution, concentrations, and mass flux of dissolved phase contaminants. The scope of work will include the installation of soil borings to evaluate soil impacts and installation of shallow and deep monitoring wells to evaluate the presence of non-aqueous phase liquids (NAPL) in the saturated zone and to evaluate migration and potential impact to the river. This work will include:

- i. Drilling soil borings and collection/analysis of soil samples at up to four locations where past laser-induced fluorescence (LIF) surveys indicate that submerged NAPL may be present. Analyses will be performed to assess the presence and composition of submerged NAPL (if any).
- ii. Installation of up to four deep wells along the river bank and up to four additional deep wells farther upland positioned to evaluate possible NAPL presence and possible dissolved hydrocarbon compounds in groundwater.
 1. If NAPL is present, monitoring and testing will be performed to assess potential mobility of NAPL. Monitoring will also be performed to assess whether NAPL is present on the basalt bedrock surface.
 2. If NAPL is present on the bedrock surface, baseline data of the NAPL's physical properties (density, viscosity, water/NAPL interfacial tension, and capillarity) will be collected to assist with modeling efforts for evaluation of possible migration pathways.
- iii. Installation of sufficient number of shallow wells (up to four) along an estimated 100 to 170 yard transect parallel and in close proximity of the river to monitor mass flux of contaminants and assess geochemical indicators of natural attenuation in this zone because influx of surface water to groundwater in this area may contribute to heightened natural attenuation potential. The additional wells will also allow determination of mass flux across the area of the site affected by dissolved phase and NAPL contaminants. Also, the groundwater in the new shallow groundwater monitoring wells will be initially sampled for gasoline and associated constituents. If dissolved phase gasoline-range hydrocarbons are not detected, Ecology may decide that these compounds can be removed from the analyte list for future monitoring.
- iv. The chemistry and distribution of submerged NAPL and of shallow groundwater NAPL will be evaluated using appropriate technology to properly assess the nature of the NAPL and its contribution to dissolved hydrocarbon compounds in groundwater.

D. Previous Site Assessment. Although the bulk of the fueling activities took place in the west half of the site, other structures and storage tanks existed that may have contributed contaminants to the environment. Consequently, the sufficiency of previous site investigations performed in 2003 and 2004 will be evaluated through additional sampling of soil and groundwater to eliminate other chemicals of concern that may potentially impact the soil, groundwater and/or surface water. Other chemicals of concern may include gasoline and associated constituents, metals, cPAHs and chlorinated solvents.

- i. Evaluate groundwater in the vicinity of the former oil house and the former 1,000 gallon gasoline UST. Analyze for gasoline, benzene, toluene, ethylbenzene, xylenes, naphthalenes and lead.
- ii. Evaluate groundwater in the vicinity of the former 5,000 gallon oil UST. Analyze for diesel range organics, naphthalenes, lead and carcinogenic PAHs.
- iii. Evaluate groundwater in the vicinity of the former engine house for chlorinated solvents, metals (including arsenic), cPAHs, gasoline range and diesel range organics, and associated petroleum hydrocarbons constituents such as naphthalenes and BTEX.
- iv. Additional soil and groundwater assessment of the former transformer storage area. Analyze for PCBs in soil and if PCBs are found in soil above 1 mg/kg then sample groundwater for PCBs.
- v. Assess dissolved and total lead in groundwater in existing groundwater monitoring wells.

Task 4: Prepare RI/FS Report

Upon completion of the final phase of RI field activities, a draft and a revised RI/FS Report will be prepared in accordance with WAC 173-340-350 to i) compile the results of all RI activities and ii) evaluate a range of remedial alternatives and provide recommendations for a proposed remedial action (or interim actions) to address site conditions and support Ecology's eventual selection of an appropriate remedial action for the BNSF Track Switching Facility (aka Wishram Railyard) site.

Task 5: Prepare Draft Cleanup Action Plan

Upon Ecology's approval of the revised RI/FS Report, a draft Cleanup Action Plan (CAP) will be prepared in accordance with WAC 173-340-380.

Task 6: Interim Action

If the parties agree to conduct interim action pursuant to Sections VI.E and VII.J of the Agreed Order, an interim action work plan will be prepared for Ecology's review and approval in accordance with WAC 173-340-430. Any interim action work plan will include a detailed schedule for implementing and reporting on the interim action.

EXHIBIT C

Schedule of Deliverables or Action Required

EXHIBIT C

Schedule of Deliverables or Action Required

Deliverable or Action Required	Completion/Due to Ecology
Continued monitoring of river bank	To be conducted on a monthly basis from the Effective date until otherwise directed by Ecology, with increased frequency, reporting and response as described in Exhibit B, Task 1.
Draft RI Work Plan, including detailed schedule, HASP and SAP/QAPP	Due within 60 days of Effective date for Order.
Final RI Work Plan	Due within 45 days of receipt of Ecology's written comments on Draft RI Work Plan.
Perform RI field work, including any field work associated with any modifications or addenda to the RI Work Plan.	In accordance with detailed schedule in Ecology-approved Final RI Work Plan and any modification or addenda thereto.
Monthly reports on the progress of the RI	Monthly progress reports will be submitted to Ecology via mail or email. Progress reports shall be submitted to Ecology on or by 15th of the month for work performed the previous month. Monthly reporting will discontinue upon submission of the Draft RI/FS.
Draft RI/FS Report	Due within 120 days of receipt of the validated analytical data from the final phase of sampling events specified under the Final RI Work Plan or any modifications or addenda thereto.
Revised RI/FS Report	Due within 45 days of receipt of Ecology's comments on the Draft RI/FS Report
Draft Cleanup Action Plan	Due within 60 days of Ecology's written approval of Revised RI/FS Report.
Interim Action (if any)	In accordance with detailed schedule in Ecology-approved Interim Action Work Plan.

This table describing the schedule of deliverables or action required is a summary of the obligations described in greater detail in Exhibit B (Statement of Work).