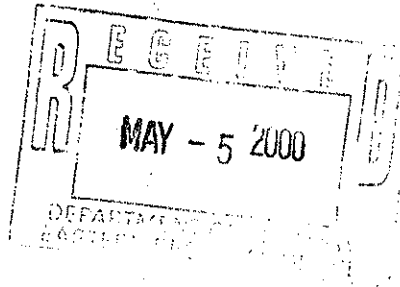


BN-Othello



ADAMS COUNTY
FILED

APR 17 2000

ROBERT V. BLAIR Clerk
BY

JS 558

SUPERIOR COURT OF WASHINGTON FOR ADAMS COUNTY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

THE BURLINGTON NORTHERN &
SANTA FE RAILWAY COMPANY,

Defendant.

No. 97-2-00237-4

**AMENDMENT NO. 1 TO
CONSENT DECREE
(BN-OTHELLO SITE)**

This amendment to Consent Decree No. 97-2-00237-4 is issued pursuant to the authority of RCW 70:105D, the Model Toxics Control Act (MTCA).

STATEMENT OF CURRENT CONDITIONS

A. Consent Decree No. 97-2-00237-4 was signed by the Court and filed in November 10, 1997. The Decree was a negotiated settlement between the Washington State Department of Ecology ("Ecology") and Burlington Northern Railroad Company, now The Burlington Northern & Santa Fe Railway Corporation (BNSF).

B. Section VI.4 of the Decree required BNSF to use best efforts to obtain from the Les Schwab Tire Company a Restrictive Covenant for the portion of the Site owned by Les Schwab. In the event BNSF does not obtain a recorded Restrictive Covenant for this property, Section VI.5 required BNSF to remediate all TPH-contaminated soils to residential cleanup levels.

C. BNSF was unsuccessful in obtaining deed restrictions for the Les Schwab property. As further required under Section VI. 5, BNSF was to submit a focused Feasibility

AMENDMENT NO. 1 TO
CONSENT DECREE
(BN-OTHELLO SITE)

COPY

ATTORNEY GENERAL OF WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX (360) 438-7743

1 Study (FS) that will evaluate alternatives for remediation of the soils and appropriate cleanup
2 levels for the Les Schwab property. BNSF may propose in the focused FS TPH cleanup levels
3 which are consistent with current agency rules and policy.

4 D. To prepare for the FS, BNSF conducted additional soil sampling and data analysis
5 as presented in the report "Data Collection and Cleanup Level Comparison", Remediation
6 Technologies, Inc., October 7, 1998. Five soil borings were completed on the Les Schwab
7 property. Four of the samples showed below the TPH Method A cleanup level of 200 mg/Kg.
8 One sample exceeded the Method A level; a consideration of new risk information contained in
9 Ecology's January 1997 Interim TPH Policy Guidance showed this TPH concentration to be
10 protective of human health and the environment. Therefore, no remedial action is necessary for
11 the Les Schwab property per Exhibit B to this amendment.

12 E. This amendment to the Consent Decree is to remove the Les Schwab property
13 from the BN-Othello Site per Exhibit A.

14 AMENDMENT TO CONSENT DECREE

15 Based on the foregoing, the parties stipulate and agree that the Decree, including Exhibits
16 A and B should be amended, pursuant to the provisions of Section XV, "AMENDMENT OF
17 CONSENT DECREE", as follows:

18 A. All of the terms of the Consent Decree remain in effect unless expressly amended
19 herein.

20 B. On page 1, the Defendant's name shall be changed to The Burlington Northern &
21 Santa Fe Railway Company (BNSF). Hereafter, "BNSF" in the Consent Decree shall be changed
22 to "BNSF".

23 C. Section I (INTRODUCTION). A, Item (5) shall be amended as follows (deleting
24 "from an adjacent property owner"): (5) Record and obtain restrictive covenants for the Site.
25
26

1 D. Section IV (DEFINITIONS). A shall be amended as follows:

2 "A. Site: The Site, referred to as the BN-Othello Site, is located in the City of
3 Othello, Adams County, Washington. The Site is more particularly described in
4 Exhibit A (as amended) to the Decree, which is a diagram and legal description of
5 the Site. The Site is a "facility" under RCW 70.105D.020(4)."

6 E. Section V (STATEMENT OF FACTS): The phrase "most of" in the second
7 sentence of item (3) shall be deleted. The last sentence of item (3) shall also be deleted. Item (3)
8 shall read as follows:

9 "(3) BNSF purchased part of the Site from Chicago Milwaukee in 1980 and
10 conducted refueling activities until suspending operations in 1982. BNSF
11 currently owns the Site and uses it for grain loading."

12 F. Section VI (WORK TO BE PERFORMED) shall be amended as follows:

13 (1) The first sentence shall read:

14 "This Decree contains a program designed to protect public health, welfare and
15 the environment from the known release of hazardous substances or contaminants
16 at, on, or from the Site, and to implement the Cleanup Action Plan (Exhibit B), as
17 amended."

18 (2) Items 4 and 5 shall be deleted.

19 G. On page 12, the last item of Section VI (WORK TO BE PERFORMED) shall be
20 numbered item #4.

21 H. The project coordinator for the defendant in Section VII (DESIGNATED
22 PROJECT COORDINATORS) shall be changed to:

23 Rich Truax
24 TermoRetec Corporation
25 1011 SW Klickitat Way, Suite 207
26 Seattle, WA 981134

I. EXHIBIT A (Site Diagram and Legal Description) shall be amended as follows:

(1) The legal description of the Les Schwab property is deleted.

(2) The Les Schwab property is removed from the Site. A revised Site
diagram is attached.

1
2 J. EXHIBIT B (Cleanup Action Plan) shall be amended as follows

- 3 (1) On page ii of the EXECUTIVE SUMMARY, under the section of
4 Remedy, the last sentence - "BN will also be required to either obtain
5 agreement with Les Schwab, an adjacent property owner, to execute a
6 similar deed restriction for the impacted area in its property or else
7 remediate all soils that exceeds TPH cleanup levels on the Les Schwab
8 property pursuant to the Consent Decree for this Site." - shall be deleted.
9
10 (2) On page 1-3 (Site Description and History), the second sentence of the
11 first paragraph shall read: "This Site consists of the BN property shown in
12 Figure 1-2.", deleting the phrase "and a portion of the Les Schwab
13 property".
14
15 (3) Under Section 1.3.4 (Current Areas and Volumes of TPH-impacted Soil),
16 on page 1-15, a new paragraph is added following the first paragraph as
17 follows:
18
19

20 "In 1998, BN collected additional soil samples inside the Les Schwab property in
21 order to analyze for fractionated carbon ranges to be able to implement Ecology's
22 Interim TPH Policy that became effective in 1997. The sampling results and TPH
23 cleanup analysis are presented in the report "Data Collection and Cleanup Level
24 Comparison", Remediation Technologies, Inc., October 7, 1998 (Attached as
25 Addendum 1 to Exhibit B). Four of five additional soil samples taken from the
26 Les Schwab property showed that TPH cleanup levels were below the Method A
cleanup level of 200 ppm. The sample exceeding the TPH Method A level at
1900 mg/Kg TPH was found to be protective of human health and the
environment after applying Interim TPH Policy Guidance. Based on the Interim
TPH calculations (Attached as Addendum 2 to Exhibit B), the Method B
residential soil TPH cleanup level is 4248 mg/Kg. None of the TPH
concentrations in the Les Schwab property soils exceed this Method B level."

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2 (4) Section 3.1 (Cleanup Levels), page 2-1 – This first paragraph is amended
3 as follows:

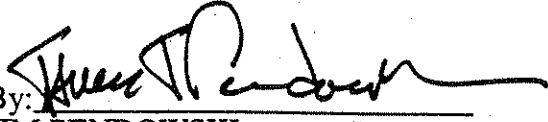
4 “A risk assessment for the site was performed as part of the RI/FS (RETEC,
5 1994). MTCA Method A has been used to establish cleanup levels for the BN
6 property. Method B soil TPH cleanup level was later established for the Les
7 Schwab property using Ecology’s 1997 Interim TPH Policy. The following are
8 the cleanup levels for the Site:


- 9 1. The cleanup level for TPH for the BN-property soils is 200 mg/Kg
10 (Method A).
11 2. The cleanup level for TPH for the Les Schwab property soils is 4248
12 mg/Kg (Method B).
13 3. The ground water cleanup level is 1000 µg/L for TPH and 0.1 µg/L for
14 carcinogenic PAH.”

15 (5) Section 4.4 (Institutional Controls), pages 4-6, the last two sentences of the
16 last paragraph – “BN will be required to obtain an agreement with Les
17 Schwab to execute a similar deed restriction for the impacted southwest
18 portion of its property. If BN cannot obtain Les Schwab’s agreement, BN
19 will have to cleanup the soils in this area to TPH cleanup levels, pursuant
20 to the terms of the Consent Decree.” - shall be deleted.
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1 DEPARTMENT OF ECOLOGY

CHRISTINE O. GREGOIRE
Attorney General

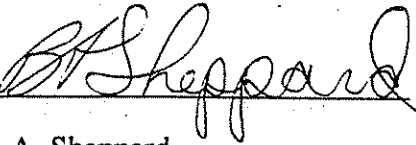
2
3 By: 
JIM PENDOWSKI
4 Program Manager
Toxics Cleanup Program

By: 
KEN LEDERMAN, WSBA # 26515
Assistant Attorney General
Attorneys for Plaintiff

5 Date: 4/04/00

Date: 4/12/00

7
8 THE BURLINGTON NORTHERN &
SANTA FE RAILWAY COMPANY

9
10 By: 
11 Bruce A. Sheppard

12 Manager Environmental Remediation

13 Date: February 1, 2000

14
15
16 DATED this 17 day of April, 2000.

17
18
19  RICHARD W. MILLER

JUDGE
Adams County Superior Court

20
21 K:\16065\88022\ICST\ICST_P200G