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8 MODEL TOXICS CONTROL ACT
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10 In the Matter of
11 Othello Railyard Site
Othello, Washington

Interim Remedial Action
Agreed Order
Order No.

12 91 TC-E703
13

14 I.

15 JURISDICTION

16 This Order is issued pursuant to the authority of the
17 Model Toxics Control Act (MTCA), ch. 70.105D RCW.
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19 II.

20 FINDINGS OF FACTS

21 Based upon the information available to it and without
22 adjudication of any facts or legal issues, the Washington
23 State Department of Ecology (Ecology) finds that the following
24 facts exist for the purpose of issuance of this Order. The
25 undersigned Burlington Northern Railroad Company (BNRR)

26 AGREED ORDER

1 neither admits nor denies the accuracy of any factual
2 statement or legal conclusion contained in this Order. Solely
3 for the purposes of enforcing this Order, BNRR agrees not to
4 contest Ecology's jurisdiction or authority to issue this
5 Order.

6 A. Ecology is an agency of the State of Washington
7 vested with the power to investigate releases or threatened
8 releases of hazardous substances or to require potentially
9 liable persons (PLPs) to investigate releases or threatened
10 releases of hazardous substances. Ecology has the power to
11 conduct remedial actions to remedy such releases or to require
12 PLPs to conduct remedial actions to remedy such releases.

13 B. BNRR has conducted some remedial investigation at
14 the Site. Based on this investigation and upon a review of
15 Ecology files and records, Ecology has determined that
16 hazardous substances, as defined by RCW 70.105D.020(5) are
17 present at the Othello Railyard Site. Those hazardous
18 substances include petroleum and petroleum products.
19 Currently, the data contained in Ecology files indicates the
20 present need for interim remedial action at the Site. The
21 nature of the hazardous substances, however, requires further
22 remedial investigation to adequately determine the nature and
23 scope of the interim remedial action(s) needed. Further
24 remedial investigation shall be conducted pursuant to the work
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1 plan referenced in Section IV, paragraph 1 of this Agreed
2 Order.

3 Background

4 1. Location. The Othello Railyard Site is located
5 in Adams County, Washington within Sections 3 and 4 of
6 Township 15N, Range 29E (see Figure on page 3).

7 2. Ownership. The Site is situated on property
8 presently owned by BNRR.

9 3. Site Description and Surrounding Area. The
10 Site is comprised of approximately 13 acres of land which are
11 located in an industrial section of western Othello. The Site
12 is rectangular in shape and is bordered on the east and west
13 by railroad tracks (see Figure 2 on page 4). The Potholes
14 Canal is located west of the western tracks and flows to the
15 south. A population of approximately 4800 people live in the
16 town of Othello.

17 The railyard was built in 1908 by the Chicago, Milwaukee,
18 St. Paul and Pacific Railroad (Chicago Milwaukee) and was used
19 as a refueling and maintenance facility for steam and electric
20 locomotives. During the transition to diesel locomotives in
21 the 1950's, the railyard served primarily as a refueling stop.
22 BNRR purchased the property from Chicago Milwaukee in 1980 and
23 conducted diesel refueling activities until suspending
24 operations in 1982.

III.

ECOLOGY DETERMINATIONS

1. BNRR is the "owner or operator" of the property as defined in RCW 70.105D.020(6).

2. The property described above is a "facility" as defined in RCW 70.105D.020(3).

3. Certain substances identified at the 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 facility and all factors known to Ecology, there is a release or threatened release of hazardous substances from the facility, as defined in RCW 70.105D.020(10).

5. By letter dated January 9, 1990, Ecology notified BNRR of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

6. Pursuant to RCW 70.105D.030(1) and RCW 70.105D.050, if there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, Ecology may require potentially liable persons to conduct remedial actions, including investigations, to remedy releases or threatened releases of hazardous substances.

7. The data contained in Ecology files indicates the present need for further remedial investigation to adequately determine the scope of the interim remedial action(s) needed

1 at the Site. Such remedial investigation and subsequent
2 interim remedial action is in the public interest. The
3 interim remedial action chosen for this Site will be subject
4 to public notice and will not constitute a substantial
5 majority of the final cleanup action likely to be selected.

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7 IV.

8 WORK TO BE PERFORMED

9 Based on the facts and determinations, it is hereby
10 ordered that BNRR take the following remedial actions:

11 1. Within sixty (60) days of the effective date of this
12 Order, initiate the work according to the approved work plan.
13 (See Attachment 1 to this Order). Work shall be conducted
14 according to the schedules contained in the work plan.

15 2. The approved work plan shall be attached to this
16 Agreed Order and shall be an integral and enforceable part
17 thereof.

18 3. Develop and submit for Ecology's review and approval
19 an interim remedial action work plan in accordance with the
20 schedule in Attachment 1.

V.

TERMS AND CONDITIONS OF ORDER

1. Definitions. The definitions set forth in the MTCA shall control the meanings of the terms used in this Order, unless otherwise specified.

2. Public Notices. RCW 70.105D.030(2)(a) requires that this Order be subject to public notice. Ecology shall be responsible for providing such public notice in accordance with the public participation plan. (See Attachment 2.) Ecology 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. BNRR reserves its right to withdraw its consent to this Order if Ecology revises this Order in any way based on public comment received. According to WAC 173-340-600(10), the public comment period shall be at least thirty (30) days in duration. The public comment period must be completed before this Agreed Order becomes effective. Ecology shall allow BNRR to review fact sheets, press releases, and public notices, and accommodate where possible BNRR's concerns prior to release of such information. These documents will be submitted to BNRR for review seventy-two (72) hours prior to their release. In the event of disagreement over the contents of any document

1 prepared by Ecology for the purposes of community relations,
2 Ecology shall make the final decision about its content.

3 3. Remedial Action Costs. BNRR agrees to pay to
4 Ecology costs incurred by Ecology pursuant to this Agreed
5 Order. These costs shall include work performed by Ecology or
6 its contractors for investigations, remedial actions, and
7 order preparation, negotiations, oversight and administration.
8 Ecology costs shall include costs of direct activities; e.g.,
9 employee salary, laboratory costs, contractor fees, and
10 employee benefit packages; and agency indirect costs of direct
11 activities. Unless a dispute arises under section V,
12 paragraph 12 of this Order, BNRR agrees to pay the required
13 amount within ninety (90) days of receiving from Ecology an
14 itemized statement of costs that includes a summary of costs
15 incurred, as well as the indirect rate charged, a general
16 description of work performed, an identification of involved
17 staff, and the amount of time spent by involved staff members
18 on the project. If dispute resolution is sought under
19 paragraph 12 of this Order, BNRR agrees to pay Ecology's
20 costs, whether reduced or not, within ninety (90) days of
21 receiving Ecology's final resolution of such dispute in
22 writing. Failure to pay Ecology's costs within ninety (90)
23 days of receipt of the itemized statement of costs or within
24 ninety (90) days of receiving Ecology's final resolution of a
25 cost dispute, may result in interest charges. Payments shall

1 be made payable to the State of Washington Toxic Control
2 Account and sent to:

3 Washington Department of Ecology
4 Post Office Box 5128
Olympia, Washington 98503-5128

5 4. Designated Project Coordinators. BNRR's project
6 coordinator is:

7 Joe Kreitenger
8 Remediation Technologies, Inc.
22419 72nd Avenue S.
Kent, Washington 98032

9 The Ecology project coordinator is:

10 Flora Goldstein
11 Department of Ecology
North 4601 Monroe, Suite 100
12 Spokane, Washington 99205

13 The project coordinators shall facilitate compliance with
14 the requirements of this Order. To the maximum extent
15 possible, communications between Ecology and BNRR, and all
16 documents, including reports, approvals, and other
17 correspondence concerning the activities performed pursuant to
18 the terms and conditions of this Order, shall be directed
19 through the project coordinators. Should BNRR change its
20 project coordinator, written notification shall be given to
21 Ecology at least ten (10) calendar days prior to the change.

22 5. Performance. All remedial work performed pursuant
23 to this Order shall be under the direction and supervision, as
24 necessary, of a professional engineer or hydrogeologist, or
25 equivalent, with experience and expertise in hazardous waste

1 site investigation and cleanup. BNRR's contractor and its
2 qualifications are identified in the attached work plan.
3 Selection of any other person or contractor shall be subject
4 to Ecology approval.

5 6. Access. Ecology or any Ecology-authorized
6 representative shall have the authority to enter and to move
7 freely about all property at the Site at all reasonable times
8 for the purposes of, inter alia: inspecting records,
9 operation logs, and contracts related to the work being
10 performed pursuant to this Order; reviewing the progress in
11 carrying out the terms of this Order; conducting such tests or
12 collecting samples as Ecology or the project coordinator may
13 deem necessary; using a camera, sound recording, or other
14 documentary type equipment to record work done pursuant to
15 this Order; and verifying the data submitted to Ecology by
16 BNRR. By signing this Agreed Order, BNRR agrees to allow
17 access to the Site at all reasonable times for purposes of
18 overseeing work performed under this Order. Subject to WAC
19 173-340-800, Ecology agrees to provide BNRR reasonable notice
20 prior to entry. Ecology shall provide BNRR an opportunity to
21 split any samples taken during an inspection unless doing so
22 interferes with Ecology's sampling.

23 7. Retention of Records. Pursuant to WAC 173-340-
24 850(2) BNRR shall retain in a readily retrievable fashion,
25 during the pendency of this Order and for five (5) years from

1 the date of completion of compliance monitoring, all records,
2 reports, documents, and underlying data in their possession
3 generated pursuant to this Order. After the five-year period
4 and up to ten (10) years after termination, BNRR shall provide
5 Ecology sixty (60) days notice prior to destruction or other
6 disposal of any records, reports, documents and underlying
7 data required to be retained under this paragraph. Should any
8 portion of the work performed hereunder be undertaken by
9 contractors or agents of BNRR, a record retention requirement
10 meeting the terms of this paragraph shall be required of such
11 contractors and/or agents.

12 8. Sampling. With respect to the implementation of
13 this Order, BNRR shall make the results of all sampling,
14 laboratory reports, and/or test results generated by it, or on
15 its behalf, available to Ecology and shall submit these
16 results in progress reports and in a final report submitted in
17 accordance with the work plan. Ecology agrees to make the
18 results of all sampling, laboratory reports, and/or test
19 results generated by it, or on its behalf, available to BNRR
20 if requested by BNRR in writing.

21 At the request of Ecology, BNRR shall allow split or
22 duplicate samples to be taken by Ecology and/or its authorized
23 representatives of any samples collected by BNRR pursuant to
24 the implementation of this Order. Except in the event of an
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1 emergency, BNRR shall notify Ecology ten (10) working days in
2 advance of any sample collection activity.

3 9. Reservation of Rights/No Settlement. This Agreed
4 Order is not a settlement under the ch. 70.105D RCW.
5 Ecology's signature on this Order in no way constitutes a
6 covenant not to sue or a compromise of any Ecology rights or
7 authority. Ecology will not, however, bring an action against
8 BNRR to recover remedial action costs paid to and received by
9 Ecology under this Agreed Order. In addition, Ecology will
10 not take additional enforcement actions against BNRR to
11 require those remedial actions required by this Agreed Order,
12 provided BNRR complies with this Agreed Order. Ecology
13 reserves the right, however, to require additional remedial
14 actions at the Site should it deem such actions necessary.
15 Except as specified in this paragraph, this Agreed Order shall
16 not be construed to waive BNRR's right to bring an action for
17 contribution or to recover costs under the MTCA or any other
18 act against any other party.

19 10. Endangerment. In the event Ecology determines or
20 concurs in a determination by another local, state, or federal
21 agency that activities implementing or in noncompliance with
22 this Order, or any other circumstances or activities, are
23 creating or have the potential to create a danger to the
24 health or welfare of the people on the Site or in the
25 surrounding area or to the environment, Ecology may order BNRR

1 to stop further implementation of this Order for such period
2 of time as it deems necessary to abate the danger. In the
3 event that Ecology issues such an order, all deadlines under
4 this Order are suspended and time periods shall be extended
5 for such periods of time as Ecology determines is reasonable.

6 11. Transference of Property. No voluntary or
7 involuntary conveyance or relinquishment of title, easement,
8 leasehold, or other interest in any portion of the Site shall
9 be consummated by BNRR without provision for continued
10 implementation of all requirements of this Order and
11 implementation of any remedial actions found to be necessary
12 as a result of this Order. Prior to transfer of any legal or
13 equitable interest that BNRR may have in the property, or any
14 portion thereof, BNRR shall serve a copy of this Order upon
15 any prospective purchaser, lessee, transferee, assignee, or
16 other successor in such interest. At least thirty (30) days
17 prior to finalization of any transfer, BNRR shall notify
18 Ecology of said contemplated transfer.

19 12. Dispute Resolution. BNRR may request Ecology to
20 resolve disputes which may arise during the implementation of
21 this Order. Such request shall be in writing. Ecology
22 resolution of the dispute shall be binding and final. Subject
23 to section V, paragraph 3 of this Order, BNRR is not relieved
24 of any requirement of this Order during the pendency of the
25 dispute and remains responsible for timely compliance with the

1 terms of the Order unless otherwise provided by Ecology in
2 writing.

3 13. Compliance With Other Applicable Laws. All actions
4 carried out by BNRR pursuant to this Order shall be done in
5 accordance with all applicable federal, state, and local
6 requirements, including requirements to obtain necessary state
7 or local permits.

8 14. Amendments. Any changes to the work plan governing
9 this work shall be documented in writing and approved by
10 Ecology. Initial proposals by BNRR of any changes to these
11 plans may be done either verbally or in writing. Proposals
12 for changes must include justification for the proposed
13 changes. If initial contact is verbal, both BNRR's request
14 and Ecology's approval or disapproval must be documented in
15 writing. If BNRR contends that a force majeure event requires
16 an extension or modification of the work plan or schedule,
17 BNRR shall notify Ecology orally within seventy-two (72) hours
18 from when BNRR has knowledge of the alleged force majeure
19 event. Such oral notification shall be followed with written
20 notification within seven (7) days. The written notification
21 shall describe the alleged force majeure event and the
22 necessary extension or modification of the work plan or
23 schedule. Ecology shall approve or disapprove of the
24 requested modification or extension of the work plan or
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1 schedule within ten (10) days of its receipt of the written
2 notification.

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4 VI.

5 SATISFACTION OF THIS ORDER

6 The provisions of this Order shall be deemed satisfied
7 upon BNRR's receipt of written notice from Ecology that BNRR
8 has completed the remedial activity required by this Order, as
9 amended by any modifications, and that all other provisions of
10 this Agreed Order have been complied with.

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12 VII.

13 ENFORCEMENT

14 1. In the event BNRR refuses, without sufficient cause,
15 to comply with any term of this Order, this Order may be
16 enforced as follows:

17 a. The Attorney General may bring an action to
18 enforce this Order in state or federal court.

19 b. In any such action, BNRR may be liable for up
20 to three times the amount of any costs incurred by the State
21 of Washington as a result of BNRR's refusal to comply with
22 this Order without sufficient cause.

23 c. Additionally, in any such action, BNRR may be
24 liable for civil penalties of up to \$25,000 per day for each
25 day BNRR refuses to comply.

1 d. Should Ecology conduct or provide for
2 conducting the remedial action, the Attorney General will, if
3 necessary, bring an action to recover all costs incurred by
4 the state for such action. The Attorney General may, in his
5 sole, unreviewable discretion, bring such an action against
6 PLPs other than BNRR who are not signatories to this Order.

7 e. This Order is not appealable to the Washington
8 Pollution Control Hearings Board. This Order may be reviewed
9 only as provided for at RCW 70.105D.060 of the Act.
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VIII.

EFFECTIVE DATE

This Agreed Order shall become effective upon completion of the public comment period and upon subsequent execution by both parties.

DATED this 22 day of February, 1980.
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For the Department of Ecology:

Sherman J. Spencer Acting Section Head
For

Flora Goldstein
Section Supervisor,
Toxics Cleanup Program

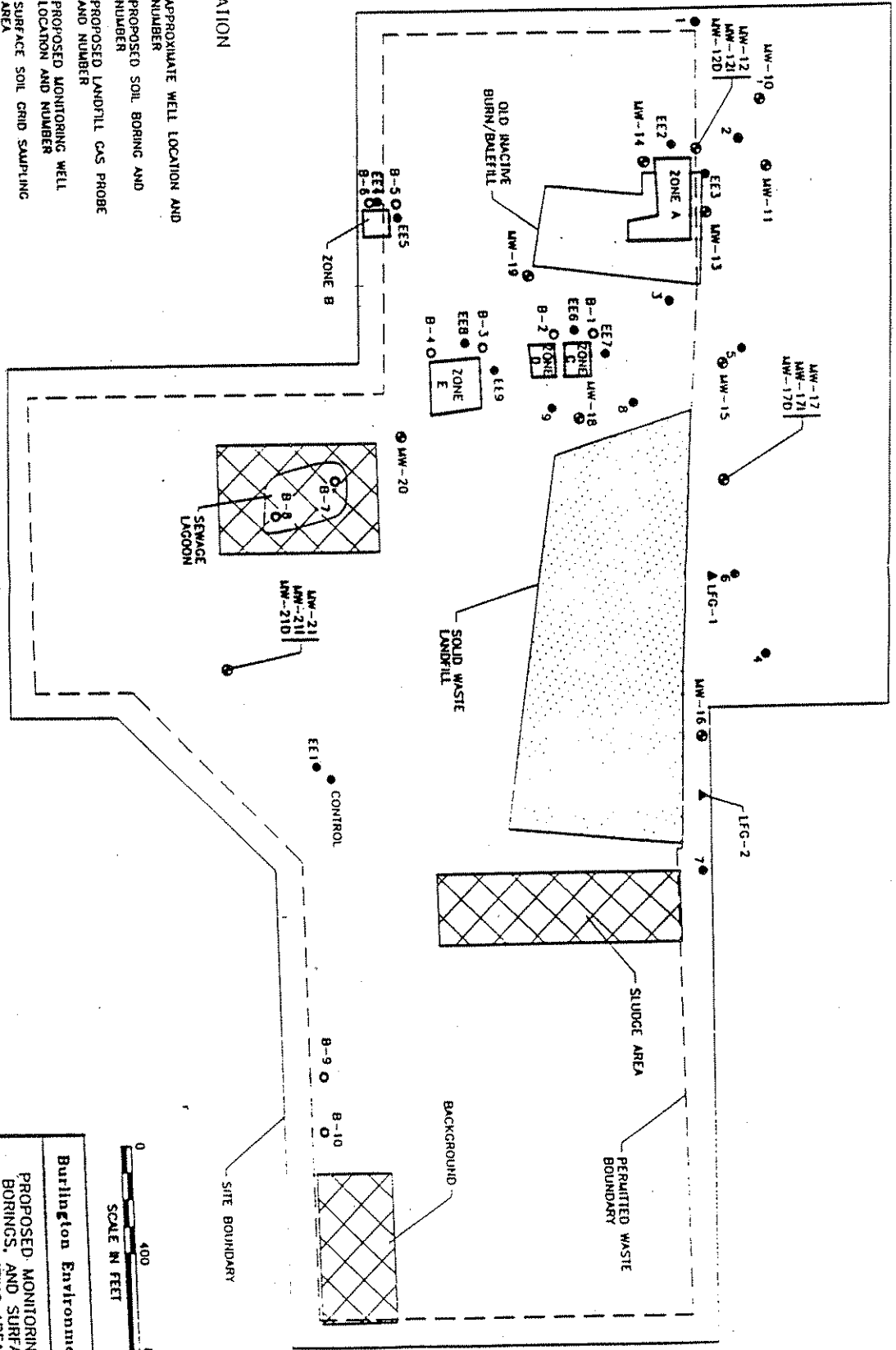
For Burlington Northern Railroad:

Melvin L. Burda

Melvin L. Burda
Manager, Environmental Projects
Burlington Northern Railroad

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- EXPLANATION**
- EE2 APPROXIMATE WELL LOCATION AND NUMBER
 - B-3 PROPOSED SOIL BORING AND NUMBER
 - ▲ LFG-1 PROPOSED LANDFILL GAS PROBE AND NUMBER
 - MW-10 PROPOSED MONITORING WELL LOCATION AND NUMBER
 - SURFACE SOIL GRID SAMPLING AREA



Burlington Environmental Inc.
 PROPOSED MONITORING WELLS,
 BORINGS, AND SURFACE SOIL
 TESTING AREAS
 PASCO LANDFILL
 PASCO, WASHINGTON
 92419

