

COPY

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by: )  
)  
)  
The Burlington Northern and Santa Fe Railway Company )  
2454 Occidental Avenue, Suite 1A  
Seattle, WA 98134-1451

AGREED ORDER  
NO. DE 98TC-E105

To: Mr. Bruce Sheppard  
The Burlington Northern and Santa Fe Railway Company  
2454 Occidental Avenue, Suite 1A  
Seattle, WA 98134-1451

I.

Jurisdiction

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

II.

Findings of Fact

Ecology makes the following Findings of Fact, without admission of such facts by The Burlington Northern and Santa Fe Railway Company (BNSF).

1. BNSF, formerly known as Burlington Northern Railroad Company (BN), is the owner of the property at East 3412 Wellesley Avenue, Spokane, Washington on which the facility is located (Exhibit A, Figure 1).
2. An aluminum dross reprocessing facility was operated on the land leased from BN. Aluminum reprocessing reportedly began at the site in 1954, by the Hillyard Processing Company, and continued through several ownership changes. Aluminum Recycling Corporation was the latest of the facility owners and operated the facility until 1987 when the property was abandoned.
3. The facility processed aluminum skim called white dross, obtained from aluminum smelters, and aluminum scrap materials in a batch process. This secondary processing of aluminum dross involved addition of sodium and potassium chloride salts. Molten



aluminum metal was extracted during the process, poured into ingots and sold. Spent dross process waste called black dross, along with non-reprocessed white dross waste remain on the site. A total of 65,000 cubic yards of these wastes occur in piles A through R and an abandoned pit on site (Exhibit A, Figure 2).

4. Ground water beneath the site occurs in the Spokane Valley-Rathdrum Prairie Aquifer. In 1978 the United States Environmental Protection Agency (EPA) designated this aquifer as a "Sole Source" Aquifer. The aquifer serves as the main drinking water supply for approximately 400,000 people in the City and County of Spokane.
5. Ecology completed a Phase I Site Inspection Report, Aluminum Recycling Corporation, Wellesley, Spokane, Spokane County, Washington, WAD 043005651, in December 1987 (Phase I SI Report) to assess the hazards of the site. As a result of that report the site was evaluated through the Washington Ranking Method (WARM) and placed on the Hazardous Sites List with a ranking of 2.
6. The Phase I SI Report states that in 1955 salt contamination from the dross waste had contaminated a BN well near the site. Complaints of windblown particulates and ammonia odors generated from the Site were reported. The occurrence of a thermite fire in the waste materials was also noted in the report.
7. In 1988, BN initiated a dust suppression program to stabilize piled waste material. A fence was also constructed around the facility to limit site access.
8. Environmental Management Resources, Inc., (EMR) prepared a Summary Report BNRR Hillyard Aluminum Dross Site Spokane, Washington, for BNSF in June 1996. The report indicates that the dross contains high concentrations of chloride, fluoride and nitrogen compounds. The report also indicates that dross waste materials generate ammonia when exposed to atmospheric moisture and water.
9. Ammonia, and the decomposition products of these wastes including chloride, fluoride and nitrate are hazardous substances as defined in chapter 70.105D RCW, part (7)(a) and (7)(e), respectively.
10. BNSF installed monitoring well (MW-3) in June 1997, and collected groundwater samples from MW-3 and previously sampled monitoring wells. Sample results presented in the Ground Water Sampling Report Hillyard Aluminum Dross Site Spokane,



Washington, 1997, (EMR) indicate that a release of hazardous substances has contaminated ground water with nitrate, fluoride, and chloride beneath the site in concentrations exceeding drinking water standards.

11. In certified correspondence dated July 29, 1997, Ecology notified BNSF of the preliminary finding of potential liability and requested comment on that finding.
12. In certified correspondence dated November 6, 1997, Ecology notified BNSF of it's status as a potentially liable person with regard to the release of hazardous substances at the Aluminum Recycling Corporation site.
13. Correspondence from EMR (February 5, 1998) indicates that BNSF has made numerous and ongoing efforts beginning in 1988 to find a reuse for the dross material.

### III.

#### Ecology Determinations

1. BNSF is an "owner" as defined at RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).
2. The facility is known as Aluminum Recycling Corporation and is located at East 3412 Wellesley Avenue, Spokane, Washington.
3. The substances found at the facility as described above are "hazardous substances" as defined in RCW 70.105D.020(7) (a) and (e).
4. Based on the presence of these hazardous substances at the facility and all factors known to the Department, there is a release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D.020(20).
5. By letter dated November 6, 1997, Ecology notified BNSF of its status as a "potentially liable person" (PLP) under RCW 70.105D.040 after notice and opportunity for comment.
6. Pursuant to RCW 70.105D.030(1) and 70.105D.050, the Department may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.
7. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.



#### IV.

##### Work to be Performed

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

1. The work to be performed includes the planning, implementation, and reporting on the conduct of a Remedial Investigation and Feasibility Study (RI/FS). Attached hereto as Exhibit B is a Work Plan for the completion of an RI/FS. Exhibit B is incorporated by reference as an integral and enforceable part of the Order.
2. BNSF shall submit all necessary work plans to Ecology for review and approval.
3. Upon approval by Ecology, BNSF will proceed with field implementation of the Work Plans in accordance with an agreed upon schedule.
4. Work Plans shall consist of a detailed description of site conditions, work to be performed, personnel requirements, and schedules for implementation and deliverables for the following:
  - a. TASK I. Project Plan including RI Work Plan, Sampling and Analysis Plan, Health and Safety Plan, and Public Participation Plan.
  - b. TASK II. Conduct RI Field Investigations.
  - c. TASK III. Remedial Investigation/Feasibility Study Report.
  - d. TASK IV. Interim Actions.

These work plans and each element thereof shall be designed, implemented, and completed in accordance with the Model Toxics Control Act (Chapter 70.105D RCW) and its implementing regulation (Chapter 173-340 WAC) as amended, and all applicable federal, state, and local laws and regulations.

5. After receipt of a deliverable plan, technical report, draft or final document, Ecology will provide written notification to the BNSF of approval or disapproval. If not approved, Ecology will specify deficiencies and necessary changes.
6. As provided in the agreed upon schedule, BNSF shall commence work and thereafter complete all tasks in the time frames indicated in the approved schedule. Upon approval





by Ecology, the Project Plan and schedule shall become an integral and enforceable part of this Order.

7. Written progress reports shall be completed every second month and shall be submitted by the tenth day of the month beginning the month following the effective date of this Order. The reports shall address and describe the previous full two months progress toward completion of the Order including work in progress, problem areas, key activities, deliverables submitted, field work and data generated, subcontracting, analytical services performed, and key staff changes.
8. In accordance with WAC 173-340-840(5), ground water sampling data shall be submitted according to Exhibit C: GROUND WATER SAMPLING DATA SUBMITTAL REQUIREMENTS. These submittals shall be provided to Ecology as required under the schedule established in provision 3, above.

## V.

### Terms and Conditions of Order

#### 1. Definitions

Unless otherwise specified, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

#### 2. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. 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.



3. Remedial Action Costs.

BNSF shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Order preparation, oversight, and administration. Ecology 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 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 general description of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will result in interest charges.

4. Designated Project Coordinators.

The project coordinator for Ecology is:

Sandra L. Treccani  
Department of Ecology  
Eastern Regional Office  
4601 N. Monroe, Suite 202  
Spokane, WA 99205-1295

The project coordinator for BNSF is:

Mr. Bruce Sheppard  
The Burlington Northern and Santa Fe Railway Company  
2454 Occidental Avenue, Suite 1A  
Seattle, WA 98134-1451

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



notification shall be provided to Ecology or BNSF at least ten (10) calendar days prior to the change.

5. Performance.

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience, and expertise in hazardous waste site investigation and cleanup. BNSF shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order in advance of their involvement at the Site. BNSF 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 will be in compliance with this Order.

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

6. Access.

Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by BNSF. By signing this Agreed Order, BNSF agrees that this Order constitutes reasonable notice of access, and agrees to allow access to the Site at all reasonable times for purposes of overseeing work performed under this Order.

Ecology will make best efforts to provide BNSF a minimum of seven (7) working days advance notice of any sampling event conducted by Ecology. Ecology shall allow split or replicate samples to be taken by BNSF during an inspection unless doing so interferes with Ecology's sampling. BNSF shall allow split or replicate samples to be taken by



Ecology and shall provide at least ten (10) working days notice before any sampling activity. Should Ecology desire to split samples during BNSF's sampling activity, Ecology will make best effort to provide at least five (5) working days advance notice.

7. Public Participation

BNSF shall prepare and/or update a public participation plan for the site as part of Task I under paragraph IV.4. Ecology shall maintain the responsibility for public participation at the site. BNSF shall help coordinate and implement public participation for the site.

8. Retention of Records.

BNSF shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of BNSF, then BNSF agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution.

BNSF may request Ecology to resolve disputes that may arise during the implementation of this Order. In the event BNSF disputes an approval, disapproval, proposed modification, or other decision or action by Ecology's project coordinator, BNSF shall utilize the following dispute resolution process:

- A. Upon receipt in writing of the Ecology project coordinator's decision, BNSF has ten (10) working days to notify Ecology's project coordinator in writing of their objection to the decision.
- B. Ecology's project coordinator and BNSF's project coordinator and/or representative of BNSF shall then confer in an effort to resolve the dispute. If Ecology's project coordinator and BNSF's project coordinator and/or representative of BNSF cannot resolve the dispute within ten (10) working days, Ecology's project coordinator shall issue a written decision.
- C. BNSF may then request that Ecology management review the decision made by Ecology's project coordinator. Such request shall be in writing and directed to the signatory or his/her successor(s) to this Order.





- D. Ecology's signatory or his/her successor(s) to this Order shall conduct a review of the dispute and shall issue a written decision regarding the dispute within thirty (30) days of BNSF's request for review. Ecology's signatory or his/her successor(s) to this Order resolution of the dispute shall be binding and final. The project coordinators will make all reasonable efforts to comply with the project schedule in the event of a dispute. However, if requested and necessary, Ecology may consider adjustments to the project schedule.
- E. Ecology and BNSF agree to utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used. BNSF is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of this Order unless otherwise notified by Ecology in writing.

10. Reservation of Rights/No Settlement.

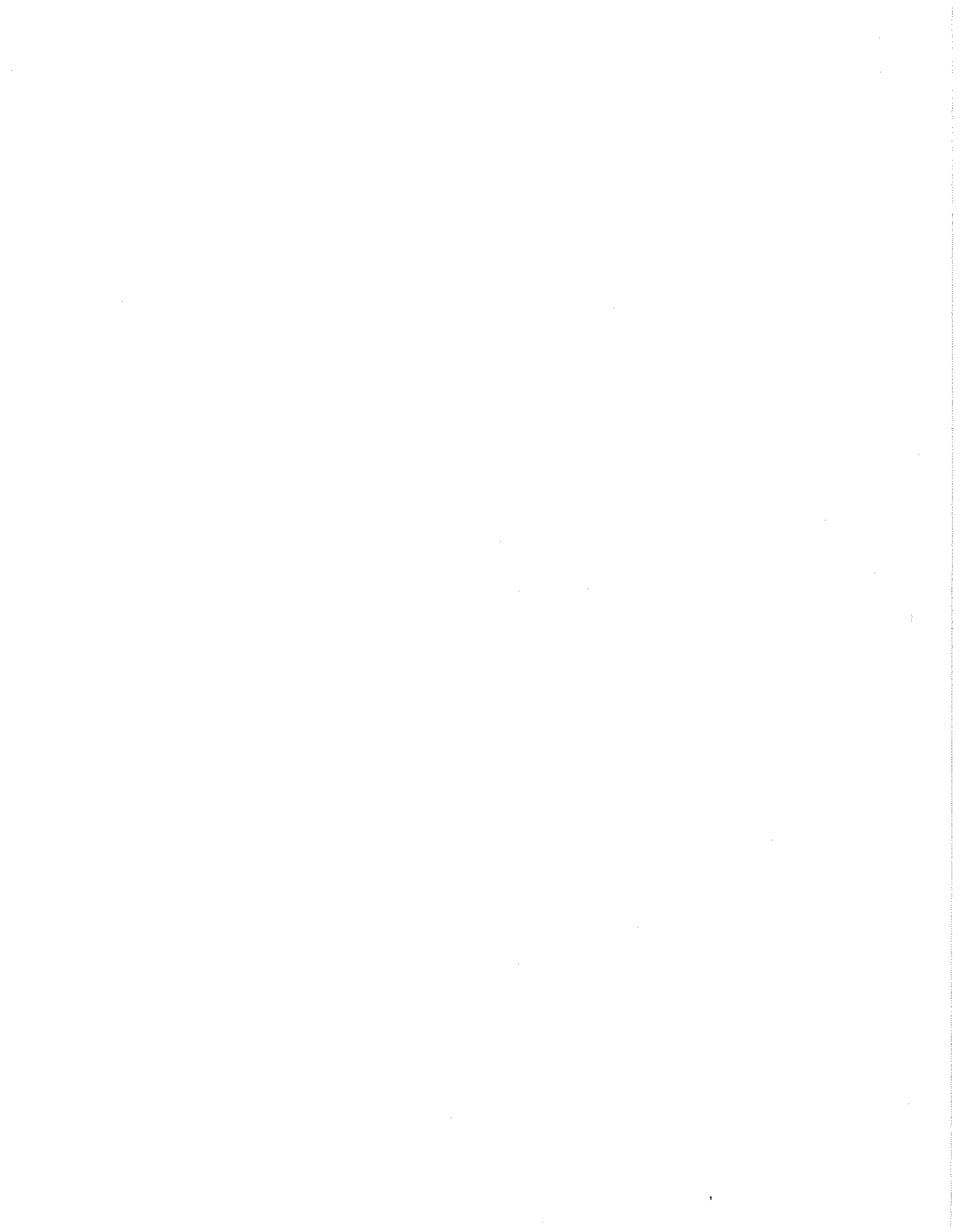
This Agreed Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against BNSF to recover remedial action costs paid to and received by Ecology under this Agreed Order.

In addition, Ecology will not take additional enforcement actions against BNSF to require those remedial actions required by this Agreed Order, provided BNSF complies with this Agreed Order.

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

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from Aluminum Recycling Corporation.

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



11. Transference of Property.

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest held by BNSF in any portion of the Site shall be consummated without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to transfer or involuntary conveyance or relinquishment of any legal or equitable interest in all or any portion of the property, BNSF shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, BNSF shall notify Ecology of the contemplated transfer or conveyance or relinquishment.

12. Compliance with Other Applicable Laws.

A. 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 paragraph B of this section.

B. Pursuant to RCW 70.105D.090(1), the substantive requirements of Chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order are binding and enforceable requirements of the Order.

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 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 Ecology of this 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.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

- C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the State to administer any federal law, the exemption shall not apply and BNSF shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

## VI.

### Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon BNSF'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 all other provisions of this Agreed Order have been complied with.

## VII.

### Enforcement

1. 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. In the event BNSF refuses, without sufficient cause, to comply with any term of this Order, BNSF will be liable for:
  - (1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
  - (2) civil penalties of up to \$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.




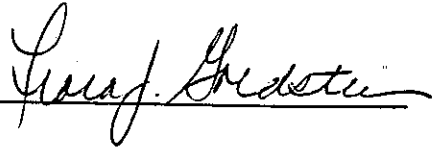


Effective date of this Order: 11-16-98

THE BURLINGTON NORTHERN  
AND SANTA FE RAILWAY COMPANY

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

By 

By 

DATE 9-29-98

DATE 11.16.1998

AGREED ORDER NO. DE 98TC-E105



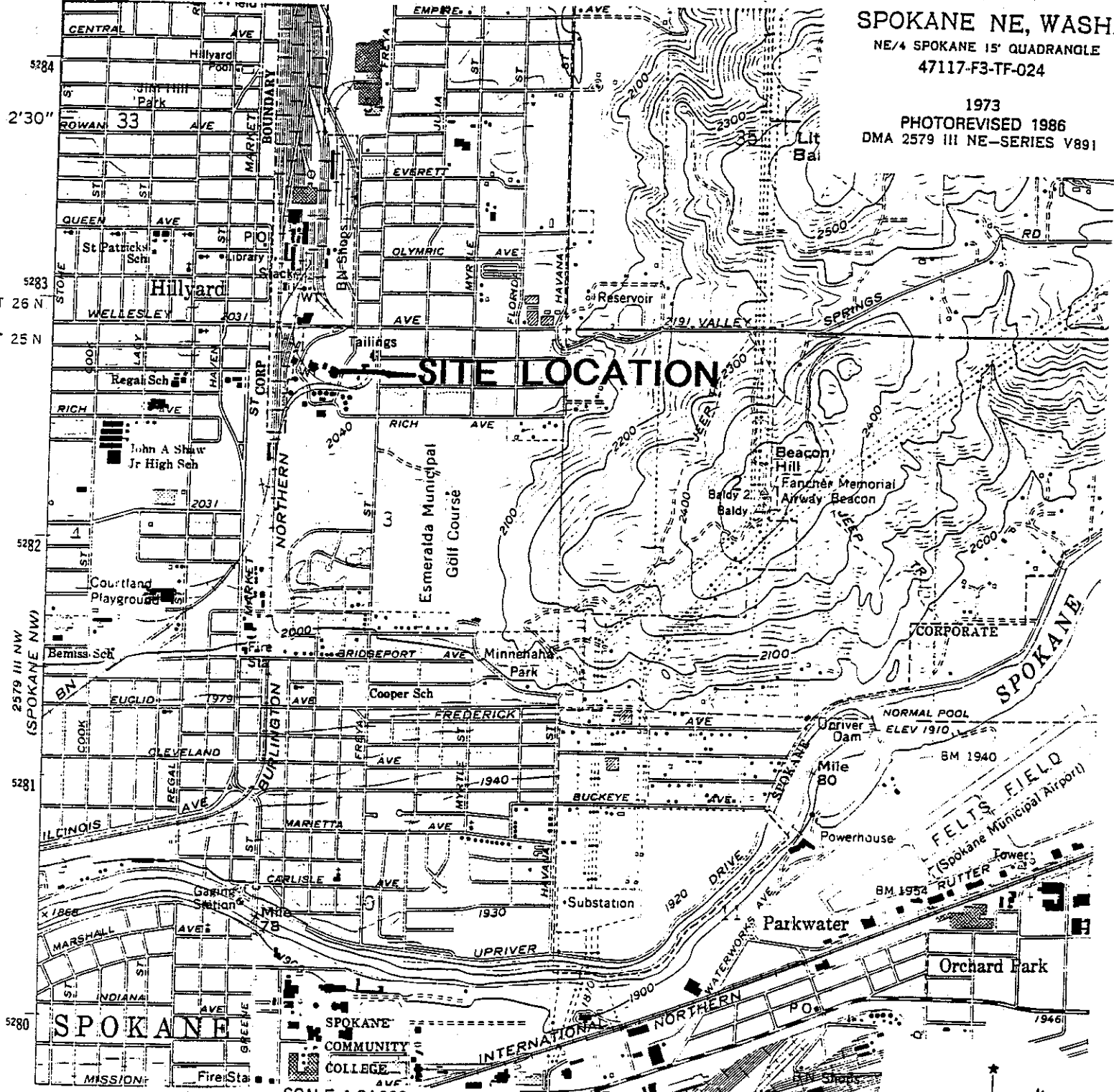
**EXHIBIT A**

**FIGURES**

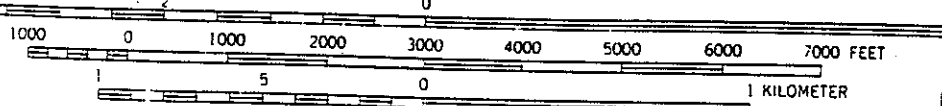


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 NE/4 SPOKANE 15' QUADRANGLE  
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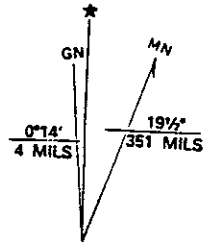
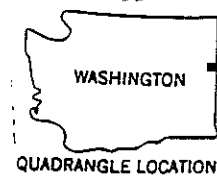
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SCALE 1:24 000



CONTOUR INTERVAL 20 FEET  
 DOTTED LINES REPRESENT 10-FOOT CONTOURS  
 NATIONAL GEODETIC VERTICAL DATUM OF 1929



UTM GRID AND 1986 MAGNETIC NORTH DECLINATION AT CENTER OF SHEET



*Burlington Northern Santa Fe  
 Spokane, Washington*

*Remedial Investigation Work Plan  
 Site Location Map*

Drawn By: JFK  
 Checked By: TJP  
 Project Number: 338  
 File Name: 338.DWG  
 Revision No.: 1  
 Date: 4/12/98

FIGURE 1





*Burlington Northern Santa Fe  
Spokane, Washington*

*Remedial Investigation Work Plan  
Pile Identifications*

Drawn By: JFK  
Checked By: TJP  
Project Number: 338  
File Name: 338.DWG  
Revision No.: 1  
Date: 4/12/98  
Scale: as shown

FIGURE 2

