



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

1250 W Alder St • Union Gap, WA 98903-0009 • (509) 575-2490

November 13, 2017

Mr. Shane DeGross  
BNSF Railway Company  
605 Puyallup Avenue South  
Tacoma, WA 98421

Re: Notice of Potential Liability under the Model Toxics Control Act for the Release of Hazardous Substances at the following Site:

Site Name: Michael Irrigation  
Site Address: 5640 Sunset Highway, Cashmere  
Facility/Site No.: 3154383  
Cleanup Site ID No: 2149

Dear Mr. DeGross:

Under the Model Toxics Control Act (MTCA), chapter 70.105D RCW, which governs the cleanup of contaminated sites in Washington State, the Department of Ecology (Ecology) may identify persons that it finds are liable for the release of hazardous substances at a site. Before making such a finding, Ecology must provide persons with notice and an opportunity to comment on the proposed finding. Any person whom Ecology finds, based on credible evidence, to be liable is known as a “potentially liable person” or “PLP”.

**Proposed Finding of Liability**

Based on credible evidence, Ecology is proposing to find BNSF Railway Company (BNSF) liable under RCW 70.105D.040 for the release of hazardous substances at the Michael Irrigation facility (Site). This proposed finding is based on the following evidence:

1. The listed owner of the property located at 5640 Sunset Highway, Cashmere, WA is “BNSF Railway Company” based on the Benton County Assessor’s website. The site includes parcel 231905120070 and railroad right-of-way adjacent to the Wenatchee River.
2. Soil and groundwater contamination was identified at the Site in “Limited Phase II Assessment Report – Leased Property No: 40,250,477” prepared by ENR Incorporated for BNSF Railway Co. dated January 12, 2005. Subsequent studies have expanded the understanding of soil and groundwater contamination at the Site.



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3. BNSF has investigated the soil and groundwater contamination since 2005; however, the downgradient extent of groundwater contamination adjacent to the Wenatchee River has not yet been defined, and no remediation of the soil or groundwater contamination has yet taken place.
4. Soil and groundwater contaminant concentration exceeds Model Toxics Control Act (MTCA) Method A cleanup levels. The MTCA Method A exceedances in soil and groundwater constitute a threat to human health and the environment, and further action is therefore required.

### **Opportunity to Respond to Proposed Finding of Liability**

In response to Ecology's proposed finding of liability, you may either:

1. Accept your status as a PLP without admitting liability and expedite the process through a voluntary waiver of your right to comment. This may be accomplished by signing and returning the enclosed form or by sending a letter containing similar information to Ecology;
2. Challenge your status as a PLP by submitting written comments to Ecology within thirty (30) calendar days of the date you receive this letter; or
3. Choose not to comment on your status as a PLP.

Please submit your waiver or written comments to the following address:

Frank P. Winslow  
CRO-Toxics Cleanup Program  
1250 W Alder Street  
Union Gap, WA 98903

After reviewing any comments submitted or after 30 days if no response has been received, Ecology will make a final determination regarding your status as a PLP and provide you with written notice of that determination.

### **Identification of Other Potentially Liable Persons**

If you are aware of any other persons who may be liable for the release of hazardous substances at the Site, Ecology encourages you to provide us with their identities and the reason you believe they are liable. Ecology also suggests you contact these other persons to discuss how you can jointly work together to most efficiently clean up the Site.

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### **Responsibility and Scope of Potential Liability**

Please note that Ecology may either conduct or require PLPs to conduct remedial actions to investigate and clean up the release of hazardous substances at a site. PLPs are encouraged to initiate discussions and negotiations with Ecology and the Office of the Attorney General that may lead to an agreement on the remedial action to be conducted.

Please also note that each liable person is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the release of hazardous substances at a site. If Ecology incurs remedial action costs in connection with the investigation or cleanup of real property and those costs are not reimbursed, then Ecology has the authority under RCW 70.105D.055 to file a lien against that real property to recover those costs.

### **Next Steps in Cleanup Process**

In response to the release of hazardous substances at the Site, Ecology intends to conduct the following actions under MTCA:

- Ecology intends to enter negotiation with the cooperative PLPs to enter into an Agreed Order for this Site.

For a description of the process for cleaning up a site under MTCA, please refer to the enclosed fact sheet.

Ecology's policy is to work cooperatively with PLPs to accomplish the prompt and effective cleanup of contaminated sites. Please note that your cooperation in planning or conducting remedial actions at the Site is not an admission of guilt or liability.

If you have any questions regarding this letter or if you would like additional information regarding the cleanup of contaminated sites, please call me at (509) 454-7835. Thank you for your cooperation.

Sincerely,



Frank P. Winslow  
Site Manager  
CRO Toxics Cleanup Program

Enclosures: 2

By Certified Mail [91 7199 9991 7037 1451 1700]