

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

AGREED ORDER

BNSF Railway Company

No. DE 15694

RE: Michael Irrigation Site (FSID 3154383)
5640 Sunset Highway
Cashmere WA 98815

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

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and BNSF Railway Company (referred to as the PLP) 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 the PLP to complete a Remedial Investigation (RI), Feasibility Study (FS), and to prepare Draft Cleanup Action Plan (DCAP) for the site identified by Ecology as the Michael Irrigation Site, located at 5640 Sunset Highway, Cashmere, Washington (the Site). 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. The PLP agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the PLP's responsibility under this Order. The PLP 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 "Michael Irrigation" and is identified by Ecology as Facility Site ID 3154383. The Site constitutes a facility under RCW 70.105D.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been

deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is generally located at 5640 Sunset Highway, Cashmere, Washington as shown in the Site Location Map (**Exhibit A**).

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

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

V. FINDINGS OF FACT

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

- A. The listed owner of the property located at 5640 Sunset Highway, Cashmere, WA is "BNSF Railway Company" based on the Chelan County Assessor's website. The site includes parcel 231905120070 and railroad right-of-way adjacent to the Wenatchee River.
- B. Soil and groundwater contamination was identified at the Site in "Limited Phase II Assessment Report - Leased Property No: 40,250,477" prepared by EMR Incorporated for BNSF Railway Co. dated January 12, 2005. Subsequent studies conducted between 2009 and 2016 have expanded the understanding of the nature and extent soil and groundwater contamination at the Site.
- C. 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 to Ecology's satisfaction, and no remediation of the soil or groundwater contamination has yet taken place.
- D. Soil contaminant concentrations have exceeded MTCA Method A cleanup levels for contaminants including diesel range organics, heavy oil range organics, gasoline range organics, benzene, and polyaromatic hydrocarbons. Groundwater contaminant concentrations have exceeded MTCA Method A cleanup levels for contaminants including

diesel range organics, heavy oil range organics, benzene, and polyaromatic hydrocarbons. The site is bisected by active BNSF railroad tracks oriented northwest-southeast. Solid waste (refuse and debris) have been found mixed with soil in test pits located on both sides of the railroad tracks. The MTCA Method A exceedances in soil and groundwater constitute a threat to human health and the environment, and further action is therefore required.

VI. ECOLOGY DETERMINATIONS

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

- A. BNSF Railway Company 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 credible evidence, Ecology issued a PLP status letter to BNSF Railway Company dated November 13, 2017, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that BNSF Railway Company is a PLP under RCW 70.105D.040 and notified BNSF Railway Company of this determination by letter dated December 20, 2017.
- C. 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.
- D. 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. Any 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.D. 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 the PLP take the following remedial actions at the Site. And that these actions must be conducted in accordance with WAC 173-340:

A. The PLP will complete a Remedial Investigation, Feasibility Study and submit an Ecology Review draft Cleanup Action Plan for the Site in accordance with the schedule and terms of the Scope of Work and Schedule, **Exhibit B**, and all other requirements of this Order. The following naming conventions shall be used for documents: Draft (designation for a document not yet approved by Ecology); Final (designation for a document after public comment and/or Ecology approval); and the Draft Cleanup Action Plan (designation for the PLP's version of the DCAP).

B. The PLP shall submit to Ecology written quarterly Progress Reports that describe the actions taken during the previous quarter to implement the requirements of this Order. All Progress Reports shall be submitted by the fifteenth (15th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent by email with copy by U.S. mail, to Ecology's project coordinator. The Progress Reports shall include the following:

- a. A list of on-site activities that have taken place during the quarter;

- b. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests;
- c. Description of all deviations from the Scope of Work and Schedule (**Exhibit B**) during the current quarter and any planned deviations in the upcoming quarter;
- d. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule;
- e. All raw laboratory data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected; and
- f. A list of deliverables for the upcoming quarter if different from the schedule.]

C. All plans or other deliverables submitted by the PLP for Ecology's review and approval under the Scope of Work and Schedule (**Exhibit B**) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

D. If the Parties agree on an interim action under Section VI.H, the PLP 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). The PLP 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 the PLP is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

E. If Ecology determines that the PLP 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 the PLP, perform any or all portions of the remedial action that remains incomplete, or at Ecology's discretion, allow the PLP opportunity to correct. The PLP 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).

F. Except where necessary to abate an emergency situation, the PLP 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. Payment of Remedial Action Costs

The PLP 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, 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). For all Ecology costs incurred, the PLP 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:

Frank P. Winslow
Toxics Cleanup Program
Washington State Department of Ecology
Central Regional Office

1250 W. Alder Street, Union Gap, WA 98903
Tel: 509-454-7835
Fax: 509.575.2809
frank.winslow@ecy.wa.gov

The project coordinator for the PLP is:

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

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 the PLP, 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 required by 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, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

The PLP shall notify Ecology in writing of the identity of any supervising 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 the PLP either own, control, or have 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 the PLP'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 the PLP. The PLP shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the PLP 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 the PLP 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, the PLP 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 generated under this order 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, the PLP shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLP pursuant to implementation of this Order, provided that doing so does not interfere with the PLP's sampling. The PLP shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the PLP 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 the PLP seven (7) days prior to any sample collection activity (other than split sampling activities) 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 analyses to be conducted, unless otherwise approved by Ecology.

F. Public Participation

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 this 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 this Order is inadequate or improper in any respect.

Ecology shall maintain the responsibility for public participation at the Site. However, the PLP 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 meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify the PLP prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the PLP that do not receive prior Ecology approval, the PLP 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. Cashmere Public Library
300 Woodring St, Cashmere, WA 98815
- b. Department of Ecology

Central Regional Office
1250 W. Alder St, Union Gap, WA 98903

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, the PLP 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, the PLP 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 the PLP may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If the PLP withholds any requested records based on an assertion of privilege, the PLPs 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 the PLP elects to invoke dispute resolution the PLPs 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), the PLP 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; the PLP'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. The PLP 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.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. Extension of Schedule

1. The PLP request for 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 the PLP 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 the PLP 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 the PLP;
- 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 the PLP.

3. Ecology shall act upon the PLP's written request for extension in a timely fashion. Ecology shall give the PLP 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. At the PLP's request, 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 the PLP. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, the PLP shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, 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 the PLP to cease such activities for such period of time as it deems necessary to abate the danger. The PLP shall immediately comply with such direction.

In the event the PLP 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, the PLP may cease such activities. The PLP 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, the PLP shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the PLP's cessation of activities, it may direct the PLP to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the PLP'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 the PLP to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the PLP regarding remedial actions required by this Order, provided the PLP 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 or 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, the PLP does not admit to any liability for the Site. Although the PLP is committing to conducting the work required by this Order under the terms of this Order, the PLP 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 the PLP 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 the PLP transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the PLP 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, the PLP shall notify Ecology of said transfer. Upon transfer of any interest, the PLP 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 the PLP pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, 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. The PLP has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology

or the PLP, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the PLP must implement those requirements.

2. All actions carried out by the PLP pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. If additional relevant and appropriate requirements are identified by Ecology or the PLP, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the PLP must implement those requirements.

3. Pursuant to RCW 70.105D.090(1), the PLP may be 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, the PLP shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70.105D.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

4. The PLP 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 the PLP determine 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 the PLP shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLP 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 the PLP and on how the PLP must meet those requirements. Ecology shall inform the PLP in

writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLP shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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 the PLP 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 or approvals.

O. Indemnification

The PLP 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 the PLP, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLP 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 the PLP's receipt of written notification from Ecology that the PLP has completed the remedial activity required by this Order, as amended by any modifications, and that the PLP 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.

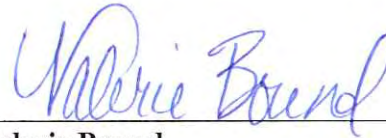
Effective date of this Order: MAY 24 2018

BNSF Railway Company

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



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EXHIBIT A – SITE LOCATION MAP



*Note: The Site is generally located at 5640 Sunset Hwy in Cashmere, and is defined by the extent of soil and groundwater contamination, not property boundaries. The arrow shown is for general location purposes only.

Aerial Map Source: Google Maps.

EXHIBIT B –SCOPE OF WORK (SOW) AND SCHEDULE

SCOPE OF WORK

PURPOSE

The work under this AO involves the steps needed in order to prepare a *Draft* Cleanup Action Plan (DCAP) to select a cleanup alternative. The steps prior to preparing a DCAP typically involve completion of a Remedial Investigation (RI) and a Feasibility Study (FS). The purpose of the RI, FS, and DCAP for the Site is to provide sufficient data, analysis, and evaluations to enable Ecology to select a cleanup alternative for the Site.

Ecology recognizes that a considerable amount of work has been conducted at the Site as independent actions. Ecology considers the previously collected data to have met a substantial amount of the characterization work needed in an RI. However, some data gaps must be filled and additional analyses presented before the RI can be considered complete. One currently known data gap pertains to the downgradient extent of groundwater contamination and determining whether or not contaminated groundwater is discharging to the Wenatchee River. Therefore, filling this known data gap is the first task under this Scope of Work (SOW).

Although the previous independent actions have included several proposals for cleanup actions, no FS has yet been performed for the Site. The FS is needed prior to selection of the preferred remedial alternative for the Site, although the potential application of applicable and appropriate model remedies may be considered by the PLP with Ecology's approval.

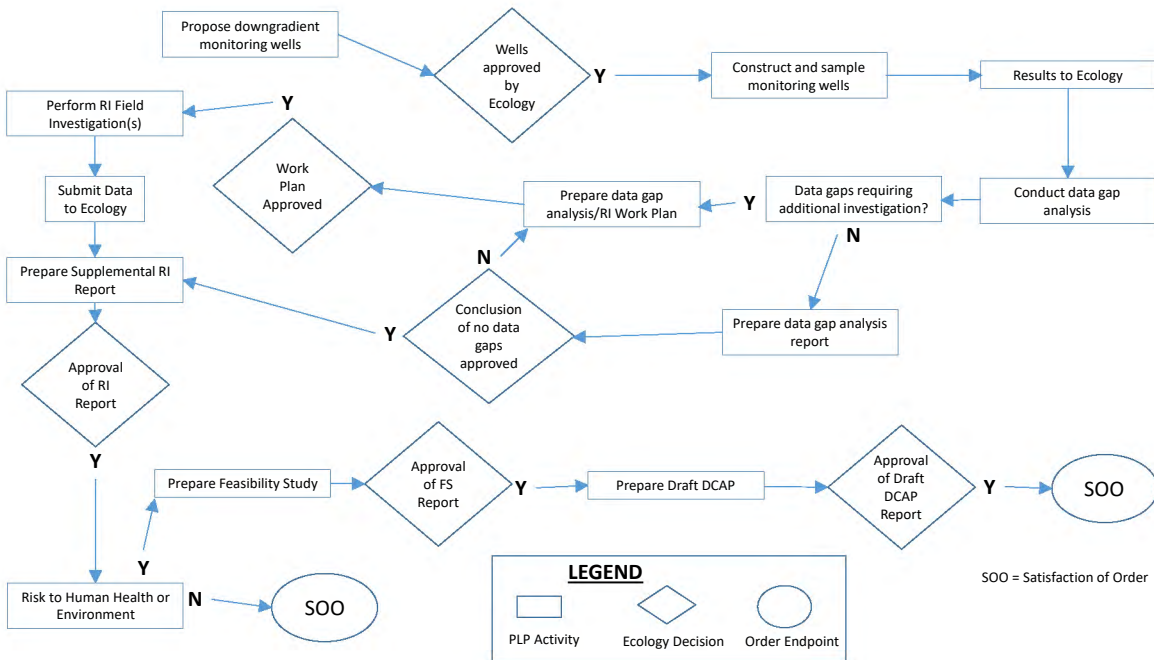
The PLP shall coordinate with Ecology throughout the development of the project tasks and shall keep Ecology informed of changes to any Work Plan or other project plans, and of any issues or problems as they develop.

The SOW is divided into seven major tasks as follows:

- Task 1. Supplemental Groundwater Data Collection
- Task 2. Data Gap Analysis/Supplemental RI Work Plan
- Task 3. Supplemental Remedial Investigation (RI) (if needed)
- Task 4. Supplemental RI Report
- Task 5. Feasibility Study (FS)
- Task 6. DCAP
- Task 7. SEPA Compliance

Figure 1 illustrates the project work flow:

Figure 1: Project Work Flow



TASK 1. SUPPLEMENTAL GROUNDWATER DATA COLLECTION

The PLP shall prepare a *Draft* Supplemental Groundwater Data Work Plan which will propose the locations, construction, and development of monitoring wells needed to define the downgradient extent of groundwater contamination near the Wenatchee River. The work plan will also detail proposed sampling and analysis methods for the monitoring wells. The work plans shall propose a minimum of three monitoring wells located east of the railroad tracks and south of existing monitoring well MW-1. BNSF will not be held in breach by Ecology if BNSF provides a reasonable basis for why all three monitoring wells cannot be installed in this area. The monitoring wells should be located hydraulically downgradient of areas of soil contamination located west of the railroad tracks. The work plan should include a map showing the proposed well locations, the most recent potentiometric surface map, and isoconcentration lines or dot maps clearly depicting the areas or locations of soil contamination above Model Toxics Control Act (MTCA) Method A cleanup levels.

The PLP shall prepare the *Draft* Supplemental Groundwater Data Work Plan and submit two hard copies and one electronic copy in Adobe (.pdf) format to Ecology for review. The PLP shall incorporate Ecology’s comments and then prepare the *Final* Supplemental Groundwater Data Work Plan and submit two hard copies and one electronic copy in Adobe (.pdf) format, to Ecology.

After Ecology approval of the *Final* Supplemental Groundwater Data Work Plan, the PLP shall install, survey, develop, and sample the additional monitoring wells. After

Exhibit B Scope of Work and Schedule

receipt of data from the analytical laboratory, the PLP shall prepared the *Draft* Supplemental Groundwater Data Report. The report will include discussion of well installation and sampling methods, present tabulated data, and attached boring log/well completion diagrams and laboratory analytical reports. This report will also include a potentiometric surface map based water levels from the newly installed and existing monitoring well network.

The PLP shall prepare the *Draft* Supplemental Groundwater Data Report and submit two hard copies and one electronic copy in Adobe (.pdf) format to Ecology for review. The PLP shall address Ecology's comments and then prepare the *Final* Supplemental Groundwater Data Report and submit two hard copies and one electronic copy in Adobe (.pdf) format, to Ecology.

TASK 2. DATA GAP ANALYSIS/ SUPPLEMENTAL RI WORK PLAN

It is anticipated that the additional monitoring wells under Task 1 will also answer questions regarding whether or not the Wenatchee River is being impacted by contaminated groundwater discharging from the Site. If groundwater contamination is found within monitoring wells located near the river, then surface water and sediment characterization may be data gaps. Other potential data gaps include but are not limited to data regarding potential contaminants not previously assessed during previous investigations and data or information that may needed to support selection of the appropriate remedial alternative(s) during the FS.

In order to identify data gaps, a preliminary Conceptual Site Model (CSM) should be presented within a Data Gap Analysis/Supplemental RI Work Plan. The CSM should be presented both graphically and in narrative, and include all elements of contamination fate and transport, and potential contamination exposure pathways and mechanisms. The report should opine on the sufficiency of existing data to characterize each identified element, pathway, or mechanism. The Data Gap Analysis portion of the Work Plan should also present maps depicting the extent of soil and groundwater contamination, either as isoconcentration maps or as contamination dot maps that clearly distinguish areas above and below cleanup levels.

Based on the identified data gaps, if any, the PLP shall prepare a *Draft* Data Gap Analysis/ Supplemental RI Work Plan (Supplemental RI Work Plan) that details the locations and methods of additional data collection activities. If no additional investigation work is proposed, then this report shall be titled "Draft Data Gap Analysis Report". The purpose of the document would then be for the PLP to make the case that no data gaps exist that require further investigation activities to prepare the Supplement RI Report (Task 4). If Ecology disagrees with this conclusion, then a Work Plan will still be required.

The PLP shall prepare the *Draft* Data Gap Analysis/ Supplemental RI Work Plan (or Draft Data Gap Analysis Report) and submit two hard copies and one electronic copy in Adobe (.pdf) format to Ecology for review. The PLP shall address Ecology's comments

Exhibit B Scope of Work and Schedule

and then prepare the *Final* Data Gap Analysis/Supplemental RI Work Plan (or *Final* Data Gap Analysis Report) and submit two hard copies and one electronic copy in Adobe (.pdf) format, to Ecology.

TASK 3. SUPPLEMENTAL REMEDIAL INVESTIGATION (if needed)

The PLP shall execute the Supplemental RI Work Plan, if any, after Ecology approval of the *Final* Supplemental RI Work Plan. After receipt of laboratory analytical data or other results, the PLP shall prepare a Supplement RI Data Report. This report will present the methods and results of the additional data acquisition. Laboratory analytical reports and other supplemental data will be presented in appendices and results discussed and summarized within the report in text, tables, and figures.

In the event that supplemental RI field investigation activities take place, the PLP shall provide interim data reports and updates to Ecology as new site data and information become available. Laboratory analytical reports shall also be provided in electronic format when it has been validated. Raw laboratory will be provided to Ecology upon request. Data collected based on the Supplemental RI Work Plan will be formally reported in the RI Report.

TASK 4. SUPPLEMENTAL RI REPORT

Although previous investigations have been presented in a series of reports that include components of a RI, a Supplement RI Report that meets the requirements of WAC 173-340-350(7) and WAC 173-204-560 is needed to integrate the data from all previous investigations and data from Tasks 1, 2, and 3 of this SOW.

The RI will determine the nature and extent of contamination exceeding preliminary MTCA cleanup levels, preliminary Sediment Management Standards (SMS) cleanup standards, if applicable, and other regulatory requirements. The RI must provide sufficient data and information to define the nature and extent of contamination.

Prior to development of the *Draft* Supplemental RI Report, a RI Pre-Report Check-in meeting will be held. During the RI Pre-Report Check-in, Ecology and the PLP will review available data and an updated conceptual site model and discuss the content and organization of the *Draft* Supplemental RI Report.

Elements of the Supplemental RI Report include (but are not limited to) the following:

- Summary of Previous Investigations
- Site Geology and Hydrogeology
- Nature and Extent of Soil Contamination
- Nature and Extent of Groundwater Contamination
- Nature and Extent of Surface Water & Sediment Contamination (if needed)

Exhibit B Scope of Work and Schedule

- Conceptual Site Model (both graphical and narrative)
- Preliminary Cleanup Levels and ARARs
- Terrestrial Ecological Evaluation

The Supplemental RI report will include maps showing potentiometric surfaces and the extent of soil and groundwater contamination; cross sections showing subsurface lithologies, well completions, water levels, and contamination data; and data tables presenting available analytical and water level data. A minimum two each transverse and longitudinal cross sections should be prepared; the transverse cross sections should extend from Sunset Highway to the Wenatchee River.

The PLP shall prepare the *Draft* Supplemental RI Report and submit two hard copies and one electronic copy in Adobe (.pdf) format, to Ecology for review and comment. After incorporating Ecology's comments on the *Draft* Supplemental RI Report to Ecology's satisfaction, the PLP shall submit two hard copies and one electronic copy in Adobe (.pdf) format, to Ecology for distribution and public comment. The Supplemental RI Report will not be considered Final until after a public review and comment period. Electronic versions of data (e.g. Excel data) shall be made available to Ecology at Ecology's request.

If the data presented within the Supplemental RI Report is determined by Ecology to be insufficient to define the nature and extent of contamination, and/or to select a cleanup action plan, an additional phase of investigation shall be conducted to collect the required data.

As shown in Figure 1, should the Final Supplemental RI Report demonstrate that there are no exceedances of applicable cleanup levels under MTCA, and Ecology concurs with this finding, then a Satisfaction of Order (SOO) will be issued and the following tasks will not be needed.

TASK 5. FEASIBILITY STUDY

The PLP shall use the information obtained in the RI to prepare a *Draft* Feasibility Study (FS) that meets the applicable requirements of WAC 173-340-350(8). The *Draft* FS will evaluate remedial alternatives for site cleanup, consistent with MTCA and SMS requirements to ensure protection of human health and the environment by eliminating, reducing, or otherwise controlling risk posed through each exposure pathway and migration route.

Prior to beginning the FS, a FS Project Scoping Meeting will be held to review ARARs, potential remedial alternatives and establish points of compliance.

The Draft FS will initially screen remedial alternatives to identify applicable remedial alternatives. The *Draft* FS will provide a detailed analysis of each applicable remedial alternative according to the requirements of WAC 173-340-350 (8) and WAC 173-204-560. The remedial alternatives will be evaluated for compliance with the applicable

Exhibit B Scope of Work and Schedule

requirements of WAC 173-340-360, Selection of Cleanup Actions, and WAC 173-204-560(4), including a detailed evaluation of remedial alternatives relative to the following criteria:

- Compliance with Cleanup Standards and Applicable Laws
- Protection of Human Health
- Protection of the Environment
- Provision for a Reasonable Restoration Time Frame
- Use of Permanent Solutions to the Maximum Extent Practicable
- The Degree to which Recycling, Reuse, and Waste Minimization are Employed
- Short-term Effectiveness
- Long-Term Effectiveness
- Net Environmental Benefit
- Implementability
- Provision for Compliance Monitoring
- Cost-Effectiveness
- Prospective Community Acceptance

The remedial alternative that is judged to best satisfy the evaluation criteria will be identified by the PLP. Justification for the selection will be provided, and the recommended remedial alternative further developed, in the FS Report. A disproportionate cost analysis (DCA) shall be performed consistent with WAC 173-340-360(3)(e). Use of model remedies shall be considered by Ecology.

The PLP shall prepare a *Draft* FS and submit two hard copies and one electronic copy in Adobe (.pdf) format, to Ecology for review. After addressing Ecology's comments on the *Draft* FS, the PLP shall submit two hard copies and one electronic copy in Adobe (.pdf) format, to Ecology for distribution and public comment. The FS will not be considered Final until after a public review and comment period.

TASK 6. DRAFT CLEANUP ACTION PLAN

Upon Ecology approval of the *Draft* Remedial Investigation Report and *Draft* Feasibility Study, a *Draft* Cleanup Action Plan (DCAP) Project Meeting will be held regarding the Cleanup Action Plan. The Cleanup Action Plan Meeting will be used to review plans for developing the *Draft* Cleanup Action Plan (DCAP).

The PLP shall prepare a DCAP in accordance with WAC 173-340-380 that provides a proposed remedial action to address the contamination present on the Site. Where contaminated sediments are included in the remedial action, the cleanup plan will comply with WAC 173-204-580, in addition to the MTCA requirements cited above. The DCAP shall include a general description of the proposed remedial actions, cleanup standards developed from the RI/FS and rationale regarding their selection, a schedule for

Exhibit B Scope of Work and Schedule

implementation, description of any institutional controls proposed, and a summary of applicable local, state, and federal laws pertinent to the proposed cleanup actions.

The PLP will submit a DCAP for Ecology's review and approval. The DCAP will include, but not be limited to, the information listed under WAC 173-340-380. The PLP shall provide two hard copies and one electronic copy in Adobe (.pdf) format, to Ecology for review and approval.

After receiving Ecology's comments on the DCAP, the PLP shall revise the DCAP to address Ecology's comments and submit three hard copies and one electronic copy in Adobe (.pdf) formats for public review.

TASK 7. SEPA COMPLIANCE

The PLP shall be responsible for assisting Ecology with its compliance with the State Environmental Policy Act (SEPA) Rules (WAC 197-11-250 through 268), including the PLP's preparing and submitting a draft and final environmental checklist together with the DCAP and, if the result of the threshold determination is a determination of significance (DS), preparing and submitting draft and draft final environmental impact statements. The PLP shall assist Ecology with coordinating SEPA public involvement requirements with MTCA public involvement requirements whenever possible, such that public comment periods and meetings or hearings can be held concurrently.

SCHEDULE OF DELIVERABLES

The schedule for deliverables described in the Agreed Order and the Scope of Work is presented below. If the date for submission of any item or notification required by this Schedule of Deliverables occurs on a weekend, state or federal holiday, the date for submission of that item or notification is extended to the next business day following the weekend or holiday. Where a deliverable due date is triggered by Ecology notification, comments or approval, the starting date for the period shown is the date the PLP received such notification, comments or approval by certified mail, return receipt requested, unless otherwise noted below. Where triggered by Ecology receipt of a deliverable, the starting date for the period shown is the date that Ecology receives the deliverable by email.

Task	RI/FS Deliverable	Deliverable description	Completion Times
1. Supplemental Groundwater Data Collection	Supplemental Groundwater Data Work Plan	PLP submittal of draft document to Ecology	Within 60 calendar days following the effective date of the Agreed Order
		Ecology comments on draft document to PLP	Within 20 calendar days following receipt of draft document
		PLP submittal of responses to Ecology comments to Ecology ¹	Within 30 calendar days of receipt of Ecology comments
		PLP submittal of final document to Ecology ¹	Within 30 calendar days of Ecology approval of responses to comments
	Supplement Groundwater Data Investigation Field Work	Completion of field work	Within 90 days of Ecology approval of final work plan ² .
	Supplemental Groundwater Data Report	PLP submittal of draft document to Ecology	Within 60 calendar days following PLP receipt of laboratory data
		Ecology comments on draft document to PLP	Within 20 calendar days following receipt of draft document
		PLP submittal of responses to Ecology comments to Ecology ¹	Within 30 calendar days of receipt of Ecology comments
		PLP submittal of final document to Ecology ¹	Within 30 calendar days of Ecology approval of responses to comments

Exhibit B Scope of Work and Schedule

Task	RI/FS Deliverable	Deliverable description	Completion Times
2. Data Gap Analysis/ RI Work Plan	Data Gap Analysis/ Supplemental RI Data Work Plan	PLP submittal of draft document to Ecology	Within 60 days following Ecology approval of the Supplemental Groundwater Data Report
		Ecology comments on draft document to PLP	Within 30 calendar days following receipt of draft document
		PLP submittal of responses to Ecology comments to Ecology ^{1,3}	Within 30 calendar days of receipt of Ecology comments
		PLP submittal of final document to Ecology ^{1,3}	Within 30 calendar days of Ecology approval of responses to comments
3. RI Field Investigations	Completion of RI Field Work	PLP submittal of field data to Ecology	According to schedule in Ecology-approved Final Work Plan ²
4. RI Report	RI Report	PLP submittal of draft document to Ecology	Within 90 days following PLP receipt of laboratory data
		Ecology comments on draft document to PLP	Within 30 calendar days following receipt of draft document
		PLP submittal of responses to Ecology comments to Ecology ^{1,3}	Within 30 calendar days of receipt of Ecology comments
		PLP submittal of final document to Ecology ^{1,3}	Within 30 calendar days of Ecology approval of responses to comments

Exhibit B Scope of Work and Schedule

Task	RI/FS Deliverable	Deliverable description	Completion Times
5. Feasibility Study	FS Report	PLP submittal of draft document to Ecology	Within 90 days following Ecology approval of Final RI Report
		Ecology comments on draft document to PLP	Within 30 calendar days following receipt of draft document
		PLP submittal of responses to Ecology comments to Ecology ^{1,3}	Within 30 calendar days of receipt of Ecology comments
		PLP submittal of final document to Ecology ^{1,3}	Within 30 calendar days of Ecology approval of responses to comments
6. Cleanup Action Plan	Draft Cleanup Action Plan (DCAP)	PLP submittal of draft document to Ecology	Within 90 calendar days following Ecology approval of Final FS Report
		Ecology comments on draft document to PLP	Within 30 calendar days following receipt of draft document
		PLP submittal of responses to Ecology comments to Ecology ^{1,3}	Within 30 calendar days of receipt of Ecology comments
		PLP submittal of revised document to Ecology ^{1,3}	Within 30 calendar days of Ecology approval of responses to comments
	Cleanup Action Plan	Ecology finalization of draft document	Within 60 calendar days following receipt of revised document

1 – Ecology reserves the right, at the sole discretion of Ecology, to require one additional comment and document revision round, if needed. All Ecology comments must be addressed to Ecology’s satisfaction prior to document finalization.

2 – Any field delays due to weather or safety considerations shall be considered by Ecology.

3 – If the document submitted is not satisfactory to Ecology after completion of two rounds of review and comments (including initial review and comments), Ecology may at its sole discretion complete the document or contract with an Ecology contractor for completion of the document at the expense of the PLP under Section VIII (A) of the Agreed Order.