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PIERCE COUNTY, WASHINGTON

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AUG 29 2011
WA State Department
of Ecology (SWRO)

After Recording Return to:

Marv Coleman, Site Manager/Inspector
Department of Ecology
Southwest Regional Office, Toxics Cleanup Program
P.O. Box 47775
Olympia, WA 98504-7775

ENVIRONMENTAL COVENANT

Grantor: BNSF Railway Company
2500 Lou Menke Drive, 3rd Floor
Fort Worth, TX 96131-2828

Grantee: State of Washington, Department of Ecology
PO Box 47775
Olympia, WA 98504-7775

Legal Description:

A portion of the SE ¼ of Section 04, Township 20 North, Range 03 East, W.M, fully described in Attachment A.

Tax Parcel Number(s): 6370000070

Grantor, **The BNSF Railway Company** hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant (hereafter "Covenant") made this 12th day of August, 2010 in favor of the State of Washington Department of Ecology ("Ecology"). Ecology shall have full right of enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics Control Act, RCW 70.105D.030(1)(g), and the Uniform Environmental Covenants Act, RCW 67.70.005 *et seq.*

This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by **The BNSF Railway Company**, its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Covenant. The Remedial Action conducted at the property is described in the following documents:

- Consent Decree entered in *State of Washington, Department of Ecology v. BNSF Railway Company, City of Tacoma, Home Electric Company, 1815 East D. Street LLC, Washington Department of Transportation*, Pierce County Superior Court Cause No.08-2-11105-4.
- "Final Remedial Investigation/Feasibility Study (RI/FS), BNSF Oil Pipeline Site, Tacoma, Washington" (GeoEngineers 2007).
- "Final Cleanup Action Plan (CAP), BNSF Oil Pipeline Site, Tacoma, Washington" (GeoEngineers 2008).
- "Remedial Action Report, BNSF Oil Pipeline Site, Tacoma, Washington" (GeoEngineers 2010).
- "Site Health & Safety Plan (HASP), Remedial Excavation BNSF Oil Pipeline Site" (GeoEngineers 2009).

These documents are on file at Ecology's Southwest Regional Office.

In accordance with the CAP, the Remedial Action focused on control and recovery of bunker-range petroleum hydrocarbons (BRPHs) believed to be associated with a former pipeline, underground storage tanks and other potential sources in the area. BRPH in soil is the primary contaminant at the site, but other contaminants associated with BRPH in soil, including carcinogenic polycyclic aromatic hydrocarbons (cPAHs), were also present and removed as part of the Remedial Action. Fill materials throughout the Thea Foss waterway area, including those on the property, are also known to have concentrations of cPAHs unrelated to BRPH. BRPH contaminated soils and wood waste were excavated to the maximum extent practicable on the property, pursuant to the CAP and Consent Decree. As provided in the CAP, complete removal was not possible due to accessibility.

This Covenant is required because the Remedial Action resulted in residual soil concentrations of BRPHs and associated cPAHs in certain limited areas, which exceed the Model Toxics Control Act Method A Cleanup Level(s) established under WAC 173-340-740. This covenant is also required because a conditional point of compliance has been established for groundwater.

The undersigned, **The BNSF Railway Company**, is the fee owner of real property (hereafter "Property") in the County of Pierce, State of Washington, that is subject to this Covenant. The Property is legally described in Attachment A of this covenant, which is made part hereof by reference.

A portion of the Property contains residual bunker-range petroleum hydrocarbon (BRPH) contaminated soil. The locations of this soil are depicted in Attachment B, made part hereof by reference. Carcinogenic polycyclic aromatic hydrocarbons (cPAHs) are also present in fill materials on the property, in some areas largely unrelated to BRPH. The known locations of

cPAH contaminated soil are also depicted in Attachment B. This Covenant addresses activities on those areas with residual BRPH and cPAH as shown in Attachment B (the "Affected Area").

The BNSF Railway Company makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1.

1. No groundwater may be taken for any use from the Affected Area.
2. Any activity on the Affected Area that may result in the release or exposure to the environment of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Some examples of activities that are prohibited in the capped areas include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load-bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork.

Section 2. Any activity on the Affected Area that may interfere with the Integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Any activity on the Affected Area that may result in the release or exposure of the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the Property must give thirty (30) days advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Affected Area shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Covenant and notify all lessees of the restrictions on the use of the Affected Area.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Affected Area that is inconsistent with the terms of this Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Affected Area at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the Affected Area, to determine compliance with this Covenant, and to inspect records that are related to the Remedial Action. All parties who access the Affected Area pursuant to this Section will be required to complete BNSF's Contractor Safety Training Program (www.contractororientation.com) unless they are personally escorted by someone who has completed the program.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Covenant shall no longer limit the use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

Section 9. By signing this Covenant, the Owner does not intend to affect the scope of existing federal preemption.

BNSF RAILWAY COMPANY

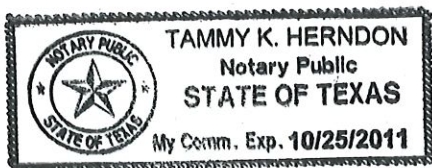
By: David P. Schneider dated: 8/12/2011

Name: David P. Schneider

Title: General Director - Land Revenue Management

Texas
STATE OF WASHINGTON)
) ss.
COUNTY OF Tarrant)

On this 12th day of August, 2011, I certify that David P. Schneider is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned therein.



Tammy K. Herndon
Notary Public in and for the State of Washington,
Print Name Tammy K. Herndon
My commission expires _____

ATTACHMENT A
Land Description

A FORTY-FIVE (45) FOOT WIDE STRIP OF LAND RESERVED BY THE NORTHERN PACIFIC RAILWAY COMPANY FOR RAILROAD PURPOSES LYING BETWEEN BLOCKS A AND B AS SHOWN ON THE CORRECTED PLAT OF NORTHERN PACIFIC EAST D STREET INDUSTRY SITES, RECORDED UNDER AUDITOR'S FILE NUMBER 1918071, VOLUME 21 OF PLATS, PAGES 31 AND 32, RECORDS OF PIERCE COUNTY, WASHINGTON; THE WESTERLY LIMITS OF SAID STRIP BEING THE EASTERLY RIGHT-OF-WAY MARGIN OF EAST D STREET AND THE EASTERLY LIMITS BEING THE EASTERLY RIGHT-OF-WAY MARGIN OF EAST 18TH STREET (SHOWN AS ALLEY ON SAID PLAT); SITUATE IN THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 20 NORTH, RANGE 3 EAST, WILLAMETTE MERIDIAN.

