

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Big B LLC

BNSF Railway Company

RE: Big B Mini Mart
1611 S. Canyon Road
Ellensburg, WA 98926

AGREED ORDER

No. DE 18243

TO: Big B LLC
c/o Mr. Surjit Singh
912 Koala Drive
Omak, WA 98841

BNSF Railway Company
c/o Mr. Scott MacDonald
605 Puyallup Avenue
Tacoma, WA 98421

TABLE OF CONTENTS

I.	INTRODUCTION.....	3
II.	JURISDICTION.....	3
III.	PARTIES BOUND.....	3
IV.	DEFINITIONS.....	3
V.	FINDINGS OF FACT.....	4
VI.	ECOLOGY DETERMINATIONS.....	8
VII.	WORK TO BE PERFORMED.....	10
VIII.	TERMS AND CONDITIONS.....	15
	A. Payment of Remedial Action Costs.....	15
	B. Designated Project Coordinators.....	15
	C. Performance.....	16
	D. Access.....	17
	E. Sampling, Data Submittal, and Availability.....	19
	F. Public Participation.....	20
	G. Retention of Records.....	21
	H. Resolution of Disputes.....	21
	I. Extension of Schedule.....	23
	J. Amendment of Order.....	24
	K. Endangerment.....	25
	L. Reservation of Rights.....	25
	M. Transfer of Interest in Property.....	26

N.	Compliance with Applicable Laws	27
O.	Periodic Review	28
P.	Indemnification	29
IX.	SATISFACTION OF ORDER	29
X.	ENFORCEMENT	29
	EXHIBIT A	Site Location Diagram
	EXHIBIT B	Remedial Action Location Diagram
	EXHIBIT C	Cleanup Action Plan
	EXHIBIT D	Scope of Work and Schedule

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Big B LLC (Big B) and BNSF Railway Company (BNSF) 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 Subject PLPs to implement the Cleanup Action Plan (CAP). 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, Big B LLC and BNSF Railway Company (“Subject PLPs”), 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 Subject PLPs agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the Subject PLPs’ responsibility under this Order. The Subject PLPs 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 Big B Mini Mart, Cleanup Site ID No. 4901. 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 on factors currently known to Ecology, the Site is generally located at 1611 South Canyon Road in Ellensburg, Washington (Kittitas County

Parcel Nos. 958654, 278533 and the northwest portion of 958540), as shown in the Site Location Diagram and the Remedial Action Location Diagram (Exhibits A and B).

B. Parties: Refers to the State of Washington, Department of Ecology, and the Subject PLPs.

C. Potentially Liable Persons (PLPs): Refers to Big B LLC (Big B), BNSF Railway Company (BNSF), Short Stop, LLC; Neela Tara, Inc.; Mr. Gurmit Singh Kaila, and Mr. Balbir Singh.

D. Subject PLPs: Refers to Big B LLC and BNSF Railway Company, the PLPs subject to this Order.

E. 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.

F. LNAPL: Refers to light nonaqueous phase liquid, which is a liquid such as gasoline, diesel, or other petroleum-based fuel, waste oil, and crude oil that is immiscible with water and that has a density less than that of water ($< 1 \text{ g/cm}^3$).

G. ARAR: Described in WAC 173-340-710 as applicable, relevant, and appropriate requirements, these requirements include local, state and federal laws.

V. FINDINGS OF FACT

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

A. Based upon factors currently known to Ecology, the Site is generally located at 1611 S. Canyon Road, Ellensburg, Washington, as shown in the Site Location Diagram (Exhibits A and B) (Kittitas County Parcel Nos. 958654, 278533 and the northwest portion of 958540).

1. BNSF, or a BNSF predecessor, was the owner of Kittitas County Parcel Nos. 958654 and 278533 comprising the Site from 1971 until 2014.
2. Big B is the current owner of Kittitas County Parcel No. 958654. Big B purchased this parcel from BNSF on June 30, 2014.

3. BNSF is the current owner of Kittitas County Parcel No. 278533, where the mainline railroad tracks are located. This track is a critical part of BNSF's Interstate Railway Network.

B. A gasoline/diesel station and convenience store (Gas Station) operated at the Site prior to June 30, 2014.

1. A BNSF predecessor began leasing the Site to Robert L. Zbinden and Alice B. Zbinden (the Zbindens), doing business as Zbinden Oil Company, in approximately April 1971.
2. The Zbindens operated the Gas Station located at the Site from approximately 1971 through 1985. On or about December 31, 1985, the Zbindens sold Zbinden Oil Company, including all of the company's assets and the business name, to Wenatchee Petroleum Company.
3. On February 1, 1986, a BNSF predecessor entered into a new lease with the Zbindens, doing business as Zbinden Oil Company, for a term of fifteen (15) years (Lease No. 249,120). Also on February 1, 1986, a BNSF predecessor entered into a Consent to Transfer of Possession of the leased premises from the Zbindens to Bernhard E. Schneider and Freda M. Schneider (the Schneiders). On or about March 1, 1986, the Zbindens sold certain assets and the business name of "Big Z Mini-Mart" to the Schneiders.
4. The Schneiders operated the Gas Station from March 1986 through August 1989. On September 15, 1989, a BNSF predecessor entered into a Consent to Transfer of Possession for the leased premises from the Zbindens to Gurmit Singh Kaila and Balbir Singh, doing business as Big B Mini Mart. In September 1989, the Schneiders sold certain assets and the business name of "Big B Mini-Mart" to Gurmit Singh Kaila and Balbir Singh.
5. On October 1, 1989, BNSF entered into a new lease with Gurmit Singh Kaila and Balbir Singh, doing business as Big B Mini-Mart (Lease No. 500,059).

6. In October 1990, Ecology learned that a diesel release was discovered at the Site during an excavation to replace an underground storage tank (UST). In December 1990, Balbir Singh performed an independent remedial action to remove some of the diesel-contaminated soil and free product from the Site, leaving soil and groundwater impacted with diesel- and other petroleum-range hydrocarbons.
7. In the spring of 1991, Ecology performed a Site Hazard Assessment and ultimately assigned a hazard ranking of “3” to the Site.
8. On May 30, 2001, BNSF entered into a lease with Gurmit Singh Kaila, doing business as Big B Mini Mart (Lease No. 524,365).
9. On March 12, 2004, an Ecology UST inspector issued a Notice of Non-Compliance to Gurmit Singh Kaila, doing business as Big B Mini Mart, for failure to maintain and provide records, failure to comply with release detection requirements, and failure to comply with corrosion protection requirements.
10. On March 12, 2008, Gurmit Singh Kaila was criminally indicted for structuring bank transactions to evade reporting, in violation of 31 U.S.C. § 5324, for financial transactions conducted between 2003 and 2007 involving over \$4 million. Gurmit Singh Kaila ultimately entered into a plea agreement and received an 11-month prison sentence.
11. Neela Tara, Inc., operated the Gas Station from approximately September 2007 through at least January 2009.
12. Short Stop, LLC, operated the Gas Station from approximately November 2008 through at least August 2014.
13. In April 2011, an Ecology UST inspector detected liquid consisting of petroleum hydrocarbons floating on groundwater in multiple monitoring or observation wells at the Site. The estimated thickness of free product or light nonaqueous phase liquid (LNAPL) was at least 0.04 feet (approximately 0.5 inch).

14. In February 2014, the U.S. Environmental Protection Agency (EPA) issued a Resource Conservation and Recovery Act (RCRA) Complaint and Compliance Order to Gurinder Bains, Nabin Joshi, and Short Stop, LLC, collectively doing business as Flying B #29, for failing to monitor USTs located at the Site in order to detect petroleum releases and failing to equip the UST piping with cathodic protection. The violations were ultimately resolved in a RCRA Consent Agreement and Final Order that required Gurinder Bains, Nabin Joshi, and Short Stop, LLC, to pay a civil penalty in the amount of \$11,222 to the EPA.

15. On June 30, 2014, BNSF sold what is now the Big B parcel to Big B LLC.

16. In July 2014, the four USTs located at the Site were emptied and placed into temporary closure.

17. In October 2016, the four USTs were removed and in April 2017, all USTs were recorded as permanently closed.

C. Historical testing of groundwater at the Site showed that contamination with petroleum hydrocarbons exceeded MTCA cleanup standards, and in some cases was present in excess of soil saturation levels above MTCA cleanup standards.

D. On March 23, 2015, Ecology entered into Agreed Order DE 10813 (2015 Order) with BNSF, Big B, and Short Stop, LLC. The 2015 Order required BNSF, Big B, and Short Stop, LLC, to conduct certain remedial actions at the Site, including a remedial investigation and feasibility study (RI/FS).

1. In October 2016, an interim action for the removal of light nonaqueous phase liquid (LNAPL) was initiated by Big B with the installation of piezometers to delineate the lateral extent of LNAPL at the Site. The field portion of the interim action concluded in November 2017 due to diminishing free product recovery after the removal of approximately 364 gallons of LNAPL and the reduction of the LNAPL footprint across the Site. An Interim Action Report, dated April 27, 2017, summarized the hydraulic recovery of LNAPL at the Site.

2. Big B submitted a draft RI/FS Report to Ecology in August 2018. The feasibility study selected a preferred remedial alternative based on the criteria listed in WAC 173-340-360 together with a Disproportionate Cost Analysis and Big B's internal consideration of its anticipated redevelopment of the Site as a fueling station.
3. On December 10, 2018, Ecology sent written notification to BNSF, Big B, and Short Stop, LLC, that the remedial actions required by the 2015 Order had been satisfactory completed.
4. On May 20, 2019, Ecology entered into Agreed Order No. DE 16307 (2019 Order) with BNSF and Big B. The 2019 Order required BNSF and Big B to (1) implement an interim action to excavate contaminated soil and evaluate the performance of an onsite ex-situ soil treatment technology (landfarming) at the Big B Mini Mart Site and (2) prepare a Draft Cleanup Action Plan (DCAP) for the Site.

VI. ECOLOGY DETERMINATIONS

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

A. Big B is an "owner or operator" as defined in RCW 70.105D.020(22) of a "facility" as defined in RCW 70.105D.020(8). Big B is the current owner of Kittitas County Parcel No. 958654.

B. BNSF is an "owner or operator" as defined in RCW 70.105D.020(22) of a "facility" as defined in RCW 70.105D.020(8). BNSF is the current owner of Kittitas County Parcel No. 278533. From 1971 to 2014, BNSF was also the owner of what is now identified as Kittitas County Parcel No. 958654.

C. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(32) and (13), respectively, has occurred at the Site.

D. Based upon credible evidence, Ecology issued a PLP status letter to BNSF dated May 19, 2011, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that BNSF is a PLP under RCW 70.105D.040 and notified BNSF of this determination by letter dated January 6, 2012.

E. Based on credible evidence, Ecology issued a PLP status letter to Gurmit Singh Kaila dated May 19, 2011, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Gurmit Singh Kaila is a PLP under RCW 70.105D.040 and notified Gurmit Singh Kaila of this determination by letter dated January 6, 2012.

F. Based on credible evidence, Ecology issued a PLP status letter to Short Stop, LLC, dated May 19, 2011, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Short Stop, LLC, is a PLP under RCW 70.105D.040 and notified Short Stop, LLC, of this determination by letter dated January 6, 2012.

G. Based on credible evidence, Ecology issued a PLP status letter to Big B dated July 8, 2014, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Big B is a PLP under RCW 70.105D.040 and notified Big B of this determination by letter dated August 7, 2014.

H. Based on credible evidence, Ecology issued a PLP status letter to Balbir Singh dated December 18, 2014, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and

concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Balbir Singh is a PLP under RCW 70.105D.040 and notified Balbir Singh of this determination by letter dated March 5, 2015.

I. Based on credible evidence, Ecology issued a PLP status letter to Neela Tara, Inc., dated December 22, 2014, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. By letter dated January 15, 2015, Neela Tara, Inc., voluntarily waived its rights to notice and comment and accepted Ecology's determination that Neela Tara, Inc., is a PLP under RCW 70.105D.040 on January 30, 2015.

J. Pursuant to RCW 70.105D.030(1) and .050(1), Ecology may require the 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.

K. 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. Either 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.L. 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 Subject PLPs take the following remedial actions at the Site. The area within the Site where remedial action is necessary under RCW 70.105D is described in the Remedial Action Location

Diagram (Exhibit B). These remedial actions must be conducted in accordance with WAC 173-340.

A. The Subject PLPs shall conduct a final cleanup action at the Site by implementing and completing the Cleanup Action Plan, attached as Exhibit C, and incorporated in this Order. The cleanup action is removal of LNAPL-saturated soil and ex-situ onsite treatment together with bioventing. After the active remediation, a vapor intrusion evaluation will be performed to determine if additional remedial actions are required. If the post-remediation vapor assessment indicates a risk to current or future receptors, then additional excavation of contaminated soil will be implemented. Groundwater monitoring will be conducted at compliance wells after the excavation and in accordance with the Compliance Monitoring Plan (CMP) to be described in the Engineering Design Report (EDR). At a minimum, the CMP will identify and list the monitoring wells to be sampled, the frequency of sampling, and the analytes to be assessed. Biosparging will be considered a contingent remedy if the groundwater contaminant levels are not in compliance with the MTCA cleanup standards or do not show a declining trend in concentrations through demonstrated biodegradation by the fifth year after initiation, operation and optimization of the bioventing system. An “adequate demonstration,” as specified in the EDR will be provided showing that declining TPH concentrations in groundwater are due to biodegradation and not associated with seasonal fluctuations or changing groundwater flow directions. Groundwater monitoring will consist of performance and confirmation compliance monitoring as required under the CAP (Exhibit C).

B. The Subject PLPs will implement and complete the selected cleanup actions in accordance with the Scope of Work and Schedule (Exhibit D).

C. Groundwater monitoring reports will be submitted on a yearly basis until completion of the compliance groundwater monitoring.

D. A periodic report will be submitted five (5) years following the completion of the ex-situ soil treatment and installation of the bioventing components of the CAP on the Big B property.

E. Should significant additional work be necessary based on supplemental investigation and/or new information that is revealed during the course of implementation of the CAP, a supplemental work plan shall be submitted to Ecology for review and approval according to an agreed schedule, to be determined.

F. Submit a soil excavation report to document the completion of that portion of work that will occur on the Toad's Express Mart (aka Astro Express Mart) property. *This report may be combined with the Groundwater Monitoring Report.*

G. The Subject PLPs will submit a Cleanup Action report providing the information specified in WAC 173-340-400(6)(b) and (c), following the Scope of Work and Schedule (Exhibit D). Laboratory data shall be included in the report and will be reviewed according to the quality assurance and quality control procedures outlined in the Compliance Monitoring Plan. The Cleanup Action report shall be submitted with graphic representations of the work performed. Within forty-five (45) days of receipt of Ecology's comments on the Agency review draft Cleanup Action report, the Subject PLPs will incorporate Ecology's comments and submit to Ecology the revised Cleanup Action report. After approval by Ecology, the draft Cleanup Action report will be considered final.

H. MTCA establishes that PLPs are strictly, jointly, and severally liable for the remediation of the Site, as the Site is defined in the Order. To effectuate the work to be performed under this Order in the most efficient manner, Big B has elected to take primary responsibility for implementing a CAP for the Site. However, in the event that Big B should become unable to complete performance of the work required by this Order, Big B will inform Ecology and BNSF in writing at least thirty (30) days in advance of their intent to withdraw or if they are otherwise unable to complete the work. Such notice in no way releases Big B from any liability at the Site or other obligations, including to BNSF for performance of any work at the Site. Within thirty (30) days of Big B's written notice, Ecology shall provide written notice to BNSF that BNSF must take on the responsibility to perform the remaining work, if any, to the extent allowed by applicable law. Within thirty (30) calendar days of BNSF's receipt of such notice, BNSF and Ecology shall

meet to determine a schedule for completion of the work required by this Order. This schedule may include, at Ecology's discretion, delay of the work until it can be incorporated into a final remedial action for the Site.

I. If the Subject PLP(s) learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in groundwater, the Subject PLP(s), within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

J. The Subject PLPs shall submit to Ecology written monthly Progress Reports that describe the actions taken during the previous month 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 electronic mail to Ecology's project coordinator. The Progress Reports shall include the following:

1. A list of on-site activities that have taken place during the month.
2. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.
3. Description of all deviations from the Scope of Work and Schedule (Exhibit D) during the current month and any planned deviations in the upcoming month.
4. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
5. All raw 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.
6. A list of deliverables for the upcoming month if different from the schedule.

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

L. If the Parties agree on an interim action under Section VI.K, the Subject PLPs 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 Subject PLPs 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 Subject PLPs are required to conduct the interim action in accordance with the approved Interim Action Work Plan.

M. If Ecology determines that the Subject PLPs have failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to the Subject PLPs and providing BNSF an opportunity to cure pursuant to Section VII.H, perform any or all portions of the remedial action or at Ecology's discretion allow the Subject PLPs opportunity to correct. In an emergency, Ecology is not required to provide notice to the Subject PLPs, or an opportunity for dispute resolution. The Subject PLPs shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Payment of Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

N. Except where necessary to abate an emergency situation or where required by law, the Subject PLPs shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.J (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, the Subject PLPs must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

VIII. TERMS AND CONDITIONS

A. Payment of Remedial Action Costs

The Subject PLPs 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 and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and 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).

Ecology will work with the PLPs to implement a payment plan to be re-assessed on a quarterly basis. For all Ecology costs incurred, the Subject PLPs 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:

John Mefford
Department of Ecology
Central Regional Office
1250 W Alder Street
Union Gap, WA 98903
509-454-7836
john.mefford@ecy.wa.gov

The project coordinator for Big B LLC is:

Gabe Cisneros
Floyd | Snider
601 Union Street, Suite 600
Seattle, WA 98101
206-292-2078
Gabe.cisneros@floydsnider.com

The project coordinator for BNSF Railway Company is:

Scott MacDonald
605 Puyallup Avenue
Tacoma, WA 98421
206-625-6376
Scott.macdonald@bnsf.com

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 Subject PLPs, 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 Subject PLPs shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

D. Access

Subject to the paragraphs below, Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that is located east of the fence (as depicted in Exhibit B) that the Subject PLPs 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 Subject PLPs' 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 Subject PLPs.

The Subject PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the Subject PLPs 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 Subject PLPs east of the fence line (as depicted in Exhibit B) unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology

employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

1. Access to BNSF Right-of-Way. The BNSF right-of-way (ROW), which includes an active rail line, is depicted in Exhibit B.

a. Ecology Access to BNSF ROW. For any Ecology access to the BNSF ROW, Ecology will be responsible for the safety of its employees, agents, contractors and/or designees entering the Premises. Ecology agrees that it and its employees, agents, contractors and/or designees entering the Premises will only use the Premises 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 instructed to cease using the BNSF ROW at any time by BNSF's personnel due to any hazardous condition, Ecology agrees to temporarily do so. Ecology's agreement to terminate its activities shall not limit Ecology's authority to seek further sampling or investigations pursuant to any applicable state law. Ecology agrees that BNSF has no duty or obligation to monitor Ecology's use of the Premises to determine the safety thereof, it being solely Ecology's responsibility to ensure that Ecology's activities on the Premises are safe.

b. Big B Access to BNSF ROW. BNSF has a prescribed process for third-party requests to access railroad property and has advised Big B and its contractors of that process. To the extent Big B or Big B's contractors need access to BNSF's ROW to implement the remedial actions required by this Order, Big B and/or Big B's contractors will follow BNSF's prescribed access process. In addition, Big B and BNSF agree to work in good faith to negotiate an amended access agreement with reasonable terms that ensures lateral expansion and sampling beyond existing groundwater wells under the DCAP/EDR will take place.

2. BNSF Access to Big B Property. As described in Section VII.H, Big B has elected to take primary responsibility for performing the remedial actions required by this Order. In the event that Big B fails to perform any work required by Ecology under this Order or fails to perform

such work to Ecology's satisfaction, Big B hereby grants full access to the Big B property to BNSF and BNSF contractors in order to perform such work.

3. Access to Toad's Mini-Mart Property. Big B has an existing access agreement for the adjacent property (tax parcel 958540). To the extent Big B fails to complete the work, BNSF will be given the opportunity to obtain reasonable access from the adjacent property owner to the extent needed to implement the work. Ecology will assist BNSF, as needed, to obtain access to the adjacent property if needed to implement the work.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the Subject PLPs 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 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 Subject PLPs shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the Subject PLPs pursuant to implementation of this Order. The Subject PLPs shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the Subject PLPs 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 Subject PLPs prior to any sample collection activity 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 that 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 Subject PLPs 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 Subject PLPs 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 Subject PLPs that do not receive prior Ecology approval, the Subject PLPs 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. **Ellensburg Public Library**
209 N. Ruby Street, Ellensburg, WA 98926
- b. **Ecology's Central Regional Office**
1250 W. Alder Street, 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 Subject PLPs shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall make copies of this Order available to project contractors and subcontractors and instruct them to retain documents as required by this Decree. Upon request of Ecology, the Subject PLPs 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 Subject PLPs 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 Subject PLPs withhold any requested records based on an assertion of privilege, the Subject 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 Subject PLPs elect to invoke dispute resolution, the Subject 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 Subject PLPs have 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 Subject PLPs' 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 Subject PLPs 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 (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. Extension of Schedule

1. The Subject PLPs' 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.
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the Subject PLPs 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 Subject PLPs 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 Subject PLPs.
- b. A shelter in place or work stoppage mandated by government order due to public health and safety emergencies.
- c. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.
- d. 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 Subject PLPs.

3. Ecology shall act upon any Subject PLPs' written request for extension in a timely fashion. Ecology shall give the Subject PLPs 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 Subject PLPs' 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 one of the following:

- 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.
- 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 Subject PLPs. 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 Subject PLPs 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 Subject PLP to cease such activities for such period of time as it deems necessary to abate the danger. The Subject PLPs shall immediately comply with such direction.

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

If Ecology concurs with or orders a work stoppage pursuant to this section, the Subject PLPs' 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 Subject PLPs 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 Subject PLPs regarding remedial actions required by this Order, provided the Subject PLPs comply 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 Subject PLPs do not admit to any liability for the Site. Although the Subject PLPs are committing to conduct the work required by this Order under the terms of this Order, the Subject PLPs expressly reserve 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 Subject PLPs 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 Subject PLPs' transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the Subject PLPs 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 Subject PLPs shall notify Ecology of said transfer. Upon transfer of any interest, the Subject PLPs shall notify all transferees of the 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. *Applicable Laws.* All actions carried out by the Subject PLPs 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. The cleanup activities will be conducted under a Site Development Permit and a waiver that was issued by the City of Ellensburg for the Critical Area Determination. Construction work will also proceed under a Grading Permit. The Subject PLPs have 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 Subject PLPs, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the Subject PLPs must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by the Subject PLPs pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. Table 4 in the Cleanup Action Plan lists all applicable or relevant and appropriate requirements. If additional relevant and appropriate requirements are identified by Ecology or the Subject PLPs, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the Subject PLPs must implement those requirements.

3. Pursuant to RCW 70.105D.090(1), the Subject PLPs 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 Subject PLPs 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.

4. The Subject PLPs have 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 Subject PLPs 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 Subject PLPs shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the Subject PLPs 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 Subject PLPs and on how the Subject PLPs must meet those requirements. Ecology shall inform the Subject PLPs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The Subject PLPs 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 Subject PLPs 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. Periodic Review

So long as remedial action continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. Unless otherwise agreed to by Ecology, at least every five (5) years after the initiation of cleanup action at the Site the Parties shall confer regarding the status of the Site and the need, if any, for further remedial action at the

Site. At least ninety (90) days prior to each periodic review, the Subject PLPs' shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

P. Indemnification

The Subject PLPs agree 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 either (1) or (2) arise from or on account of acts or omissions of the Subject PLPs, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the Subject PLPs 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 Subject PLPs' receipt of written notification from Ecology that the Subject PLPs have completed the remedial activity required by this Order, as amended by any modifications, and that the Subject PLPs have 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.

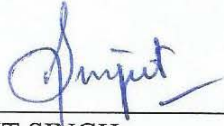
Effective date of this Order: October 12, 2020

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



VALERIE BOUND
Section Manager
Toxics Cleanup Program
Central Regional Office
1250 W. Alder Street
Union Gap, WA 98903
509-454-7886

BIG B LLC



SURJIT SINGH
Member
912 Koala Drive
Omak, WA 98841
509-560-1111

BNSF RAILWAY COMPANY

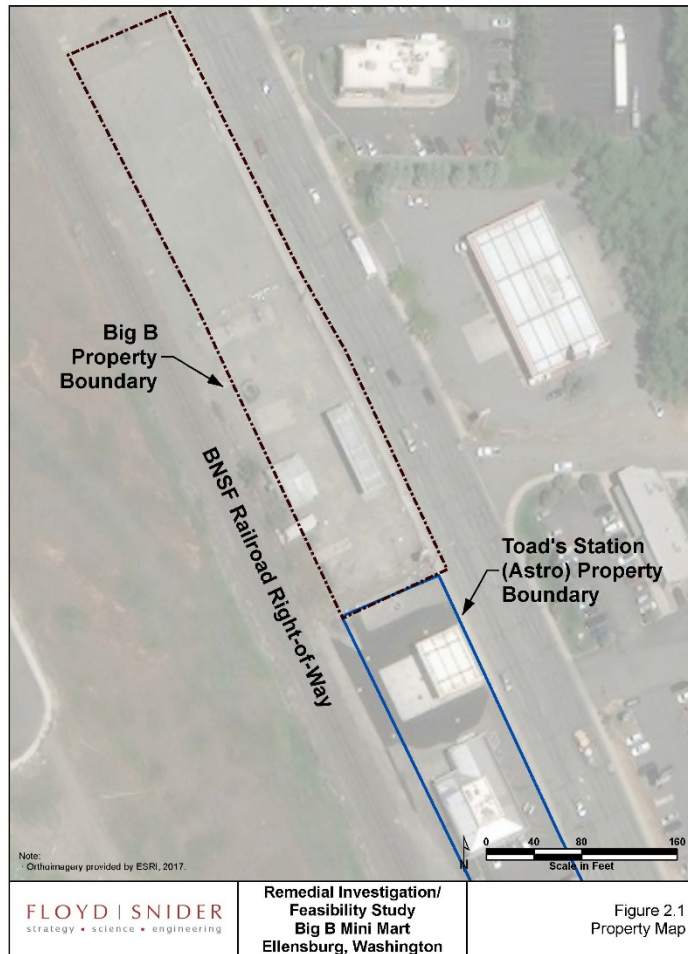
A handwritten signature in cursive script that reads "John Lovenberg". The signature is written in black ink and is positioned above a horizontal line.

JOHN LOVENBERG
Environmental Vice President
2500 Lou Menk Drive, AOB-3
Fort Worth, TX 76131
817-352-1459

Exhibit A – Site Location Diagram

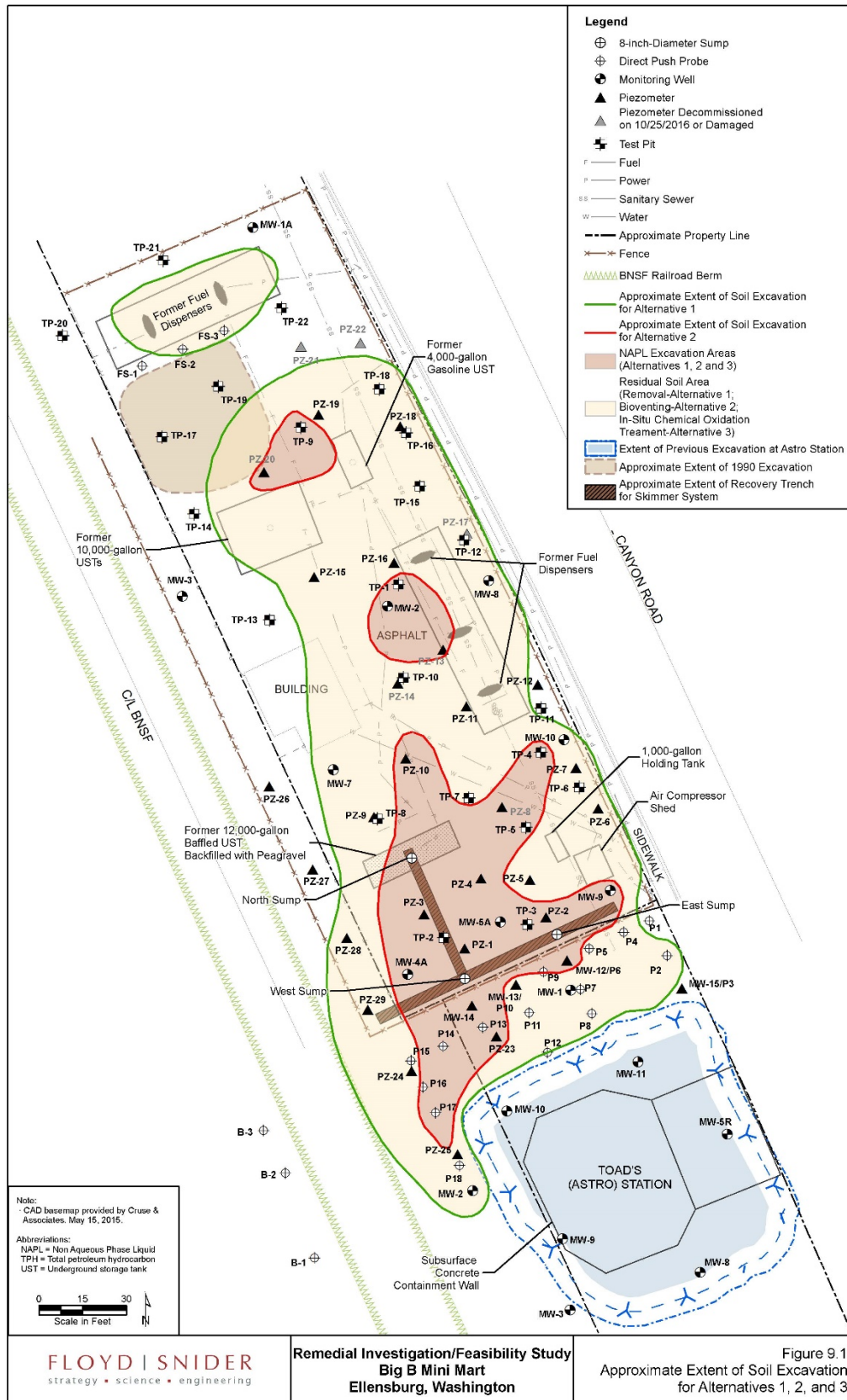


I:\GIS\Projects\GIS_Ellensburg\WDR\FIS 2017\Figure 1.1 Vicinity Map.mxd
5/6/2018



I:\GIS\Projects\GIS_Ellensburg\WDR\FIS 2017\Figure 2.1 Property Map.mxd
5/6/2018

Exhibit B – Remedial Action Location Diagram



I:\GIS\Projects\EL_Ellensburg\MXD\RIFS 2011\Figure 9.1 Approximate Extent of Soil Excavation Alternatives 1, 2, and 3.mxd 5/8/2018

EXHIBIT C – Cleanup Action Plan

EXHIBIT D – SCOPE OF WORK AND SCHEDULE

SCOPE OF WORK

PURPOSE

The work under this Agreed Order (AO) involves the implementation of the CAP and the submittal of a Cleanup Action report.

The Subject PLPs shall coordinate with Ecology throughout the implementation of the CAP 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 Scope of Work (SOW) consists of three major tasks as follows:

- Task 1. Implementation of the CAP with Assessment of Triggers for implementation of the Contingency Plan.
- Task 2. Implementation of a Contingency Plan, if deemed necessary.
- Task 3. Preparation and Submittal of the Cleanup Action report.

TASK 1. IMPLEMENTATION OF CLEANUP ACTION PLAN

The Subject PLPs will implement the CAP under this Agreed Order after receipt of Ecology's approval of the CAP. The Subject PLPs will perform the cleanup actions in accordance with the CAP and any associated documents. Groundwater monitoring will be conducted to evaluate the status of the groundwater cleanup.

Evaluate environmental media for the presence of any triggers that indicate additional actions to be implemented under a Contingency Plan to be developed.

TASK 2. CONTINGENCY PLAN

If certain criteria exist, such as the presence of nonaqueous phase liquids in any monitoring wells or exceedance of groundwater compliance levels, the Subject PLPs will implement the Contingency Plan.

TASK 3. PREPARATION OF CLEANUP ACTION REPORT

The Subject PLPs will submit an Agency Review draft Cleanup Action report to Ecology after completion of certain portions of the remedial action. The first deliverable is due after the completion of the ex-situ land treatment and installation of the bioventing system. The draft Cleanup Action report will document the results and performance of the cleanup action. If the remedial treatment actions have not lowered contaminant levels to compliance then additional active remedial actions are necessary.

EXHIBIT D – SCOPE OF WORK AND SCHEDULE

TASK 4. DECOMMISSION OF GROUNDWATER MONITORING WELLS

The Subject PLPs may submit a work plan proposing the decommissioning of specific groundwater monitoring well(s) for any well meeting cleanup standards in at least four consecutive groundwater sampling events.

SCHEDULE OF DELIVERABLES

Deliverables	Timeframe
Implement Final CAP	Any portion of the remedial action may begin within 30 days following receipt of Ecology’s approval of CAP and as consistent with this Agreed Order and the ARARs. However, the fieldwork for the land treatment component will occur over two years as Phase 1 and Phase 2. Work on Phase 1 will commence in June 2021. Phase 2 will begin in June 2022. Other components of the cleanup action can begin earlier, as site conditions allow.
Submit Progress Reports	Monthly, due by the 15 th day during performance monitoring.
Submit Groundwater Monitoring reports	On a yearly basis or as specified in the Compliance Monitoring Plan (or associated decision documents).
Submit Agency Review Periodic Review report	Within 45 days after the first five (5) years following implementation of the soil treatment.
Submit revised Periodic Review report for public comment	Within 45 days of receipt of Ecology’s comments on the Agency Review Periodic Review report.
Submit revised Public Review Periodic Review report, if required	Within 45 calendar days of receipt of Ecology’s comments on the Public Review Periodic Review report.
Evaluate remedy performance	During periodic review.
Submit Agency Review Contingency Plan for additional remedial action	Within 45 calendar days after receipt of Ecology’s determination for further action established during remedy evaluation.
Submit revised Contingency Plan for public comment	Within 45 calendar days after receipt of Ecology’s comments on the Agency Review Contingency Plan.
Submit revised Public Review Contingency Plan	Within 45 calendar days after receipt of Ecology’s comments on the Public Review Contingency Plan.

EXHIBIT D – SCOPE OF WORK AND SCHEDULE

Implement Contingency Plan for supplemental remedial action	Dependent on criteria during or after groundwater compliance monitoring, as specified in this Agreed Order and associated documents.
Submit Agency Review Cleanup Action Plan completion report	Within 60 days after completion of ex-situ land treatment and installation of the bioventing system.
Submit revised Cleanup Action Plan completion report for public review	Within 45 calendar days of receipt of Ecology's comments on the Agency Review CAP Report.
Submit revised Public Review Cleanup Action Plan completion report, if required	Within 45 calendar days of receipt of Ecology's comments on the Public Review Cleanup Action Plan completion report.