



DEPARTMENT OF
ECOLOGY
State of Washington

Response to Comments

Draft Cleanup Action Plan Amendment, Legal Agreement, and Scope of Work for the Hamilton Street Bridge Site

Facility Site ID: 84461527

Cleanup Site ID: 3509

Public comment period held:

September 28 – October 27, 2020

Summary of a public comment period and responses to comments

November 2020

Publication and Contact Information

This document is available on the Washington State Department of Ecology's website at <https://fortress.wa.gov/ecy/gsp/CleanupSiteDocuments.aspx?csid=3509>.

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Toxics Cleanup in Washington State

Accidental spills of dangerous materials and past business practices have contaminated land and water throughout the state. The Washington State Department of Ecology (Ecology) Toxics Cleanup Program (TCP) works to remedy these situations through cleanup actions. TCP cleanup actions range from simple projects requiring removal of a few cubic yards of contaminated soil to large, complex projects requiring engineered solutions.

Contaminated sites in Washington State are cleaned up under the Model Toxics Control Act (MTCA, Chapter 173-340 Washington Administrative Code), a citizen-mandated law passed in 1989. This law sets standards to ensure toxics cleanup protects human health and the environment and includes opportunities for public input.

Public Comment Period Summary

Ecology held a comment period from September 28 through October 27, 2020, for the following draft documents for the Hamilton Street Bridge site:

- Cleanup Action Plan amendment – explains how the development will enhance the cleanup actions already in place, prevent contaminants from leaving the site during construction, and protect occupants of the new buildings
- Prospective Purchaser Consent Decree – legal agreement requiring Sagamore Spokane LLC (Sagamore) to implement the Cleanup Action Plan amendment and Scope of Work as they redevelop property within the site
- Scope of Work and Schedule – details engineering, construction, and operations and monitoring reporting requirements, and the schedule for completing these milestones

We held an online public meeting at 6:30 p.m. on October 14, 2020, that was attended by one person. The presentation is available on our [Hamilton Street Bridge website](#)¹.

Ecology appreciates the comments we received from one person and one organization, which we address in the Response to Comments section that begins on page 2. After considering the comments, we have finalized the draft documents with minor modifications to the Cleanup Action Plan amendment to ensure that pilings associated with the new construction do not adversely impact groundwater.

Site Background

The site is located at 111 North Erie Street in Spokane, along the Spokane River. It was used for gas manufacturing, coal tar processing, railroad operations, roads, and retail

¹ <https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=3509>

from 1905 until 2005. The site has been vacant since 2005 when cleanup was completed. The cleanup included the following actions:

- Streambank bioengineering that provides erosion control and riparian corridor enhancement and slows interaction between groundwater and the Spokane River
- A clean soil cap covering contaminated soil while contaminants decrease naturally over time
- Groundwater monitoring, fencing, property use restrictions, stormwater management, and long-term monitoring

Response to Comments

The comment letters are printed verbatim followed by Ecology's responses.

Kevin Krogh via email October 26

Subject: River bend site

Years ago when the comp plan came out I had to fight for zoning on east Francis while in all those city council meetings I remember owners talking about the brown building area. I remember the property owners were told that area was in a flood zone and could not be developed and I have seen that area flood in the past. So what has changed? At what cost to the previous property owners? What about shoreline setbacks? Time to flush the comp plan gives bureaucrats too much power and you don't follow it anyway when it meets your special interests.

Sent from my iPhone

Ecology's responses

- **Comment:** Years ago when the comp plan came out I had to fight for zoning on east Francis while in all those city council meetings I remember owners talking about the brown building area. I remember the property owners were told that area was in a flood zone and could not be developed and I have seen that area flood in the past. So what has changed? At what cost to the previous property owners?
Response: Regarding the concern about flood risks within the project property, the Federal Emergency Management Agency's 100-year flood zone, shown on the Spokane County and City maps, is contained within the banks of the Spokane River. The area to be developed is outside of the 100-year flood zone.
- **Comment:** What about shoreline setbacks?
Response: The City of Spokane determined that the project fulfilled the City's river setback requirements for the project property. Therefore, the City approved

the Shoreline Conditional Use permit on September 11, 2020. Ecology approved the Shoreline Conditional Use permit on November 2, 2020. After a 21-day appeal period that ends on November 23, 2020, Ecology will finalize the permit. Please note that one of the key conditions of the permit is that public access to the riverbank within the project property is still available after the project is complete.

We thank you for your comments and interest in this cleanup site.

Shane DeGross, BNSF Railway Company, via email October 27

Re: Hamilton Street Bridge/ American Tar Site

Draft Cleanup Action Plan (CAP) Amendment

Dear Mr. Loftenius:

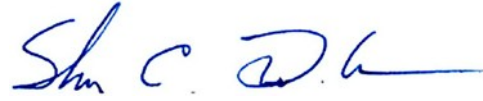
BNSF and Avista entered into a Consent Decree with Ecology in 2002 regarding the Hamilton Street Bridge/ American Tar Site. BNSF and Avista completed construction of the cleanup action and have been conducting long-term monitoring, inspection and maintenance in accordance with a Compliance Monitoring Plan (2003), Institutional Controls Plan (2003) and Operation & Maintenance Plan (2004). All three work plans were approved by Ecology pursuant to the Consent Decree and remain an enforceable part of that Decree. The most recent annual reports were submitted by BNSF and Avista in November and December of 2019.

We understand from reviewing the Draft CAP Amendment, and from conversations with the Attorney General's Office and counsel to Sagamore Spokane LLC, that the State of Washington wants to amend the Consent Decree to reflect the work being undertaken by Sagamore pursuant to a Prospective Purchaser Consent Decree (PPCD). Through counsel, BNSF has participated in these conversations, and BNSF looks forward to discussing the issues that concern BNSF at the October 30 meeting with Ecology and Avista.

If, after Sagamore submits a draft construction completion report and draft operation, inspection and maintenance plan for Sagamore's property, Ecology determines that BNSF's current, approved work plans should be amended, BNSF would of course work in good faith with Ecology and Avista, in consultation with Sagamore, to ensure that compliance monitoring, inspections and maintenance are performed consistent with the Consent Decree and in a coordinated manner. BNSF will not, however, act as a guarantor of Sagamore's activities that might exacerbate existing conditions or require further investigation or cleanup action, or any failure by Sagamore to perform its obligations under a PPCD. Financial assurance is not required by the Consent Decree and BNSF will not provide financial assurance for work necessitated by Sagamore's development or by the acts or omissions of Sagamore or its successors.

BNSF is willing to update the 2002 Environmental Covenant on BNSF's property. BNSF and Ecology have developed such covenants at other sites. BNSF is also willing to work with Ecology to ask the City to update the covenant the City recorded on the property the City acquired from BNSF for a public right-of-way. While the City's 2019 covenant was apparently not approved by Ecology, we do note that Ecology approved the City's 2015 project design and specifically reviewed it for consistency with the Consent Decree and with the 2002 covenant that BNSF recorded.

Respectfully,



Shane C. DeGross

cc: Craig Trueblood, K&L Gates

Ecology's responses

- **Comment:** If, after Sagamore submits a draft construction completion report and draft operation, inspection and maintenance plan for Sagamore's property, Ecology determines that BNSF's current, approved work plans should be amended, BNSF would of course work in good faith with Ecology and Avista, in consultation with Sagamore, to ensure that compliance monitoring, inspections and maintenance are performed consistent with the Consent Decree and in a coordinated manner.

Response: Ecology acknowledges that BNSF and Avista will continue to conduct long-term monitoring, inspection, and maintenance in accordance with the Consent Decree. Ecology looks forward to BNSF and Avista's participation to ensure that compliance monitoring, inspections, and maintenance continue to be performed in a coordinated manner.

- **Comment:** BNSF will not, however, act as a guarantor of Sagamore's activities that might exacerbate existing conditions or require further investigation or cleanup action, or any failure by Sagamore to perform its obligations under a PPCD. Financial assurance is not required by the Consent Decree and BNSF will not provide financial assurance for work necessitated by Sagamore's development or by the acts or omissions of Sagamore or its successors.

Response: Regarding the proposed Cleanup Action Plan Amendment and Sagamore's development on portions of the Site, Ecology recognizes BNSF's concerns regarding potential Site condition exacerbation and the potential for additional Site investigation due to Sagamore's development. Ecology will consider BNSF's concerns when finalizing the Cleanup Action Plan Amendment.

- **Comment:** BNSF is willing to update the 2002 Environmental Covenant on BNSF's property. BNSF and Ecology have developed such covenants at other sites. BNSF is also willing to work with Ecology to ask the City to update the covenant the City recorded on the property the City acquired from BNSF for a public right-of-way. While the City's 2019 covenant was apparently not approved by Ecology, we do note that Ecology approved the City's 2015 project design and specifically reviewed it for consistency with the Consent Decree and with the 2002 covenant that BNSF recorded.

Response: Ecology appreciates BNSF's willingness to work with Ecology to update the 2002 Environmental Covenant on BNSF property, and to request the City of Spokane update its 2019 Environmental Covenant for the Martin Luther King Jr. Drive right-of-way acquired from BNSF.