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**STATE OF WASHINGTON  
SPOKANE COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,  
  
Plaintiff,  
  
v.  
  
BNSF RAILWAY COMPANY, and  
MARATHON OIL COMPANY,  
  
Defendants.

NO.  
  
CONSENT DECREE  
RE: BNSF RAILWAY BLACK TANK  
PROPERTY SITE

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1 **I. INTRODUCTION**

2 1. The mutual objective of the State of Washington, Department of Ecology  
3 (Ecology, Plaintiff) and BNSF Railway Company and Marathon Oil Company (BNSF and  
4 Marathon, Defendants) under this Decree is to provide for remedial action at a facility where  
5 there has been a release or threatened release of hazardous substances. This Decree requires  
6 Defendants to perform remedial actions at the BNSF Railway Black Tank Property Site (Site)  
7 as specified in a Cleanup Action Plan (CAP) issued by Ecology and attached as an exhibit to this  
8 Decree. These remedial actions include, but are not limited to:

9 A. Excavating and removing shallow contaminated soil, a substantial portion  
10 of which has already occurred under Amendment No. 1 to Agreed Order No. 9188.

11 B. Installing and operating bioventing/biosparging systems, which will be  
12 optimized and added to as necessary in order to meet performance criteria established in  
13 the CAP. If the remediation systems will not meet the performance criteria as specified  
14 in the CAP, a contingent remedial technology (steam enhanced extraction) will be  
15 initiated if steam enhanced extraction is determined to be technically feasible based on  
16 steam propagation testing and pilot testing as specified in the CAP.

17 2. Ecology has determined that these actions are necessary to protect human health  
18 and the environment.

19 3. The Complaint in this action is being filed simultaneously with this Decree. An  
20 Answer has not been filed, and there has not been a trial on any issue of fact or law in this case.  
21 However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the  
22 Parties agree that settlement of these matters without litigation is reasonable and in the public  
23 interest, and that entry of this Decree is the most appropriate means of resolving these matters.

24 4. By signing this Decree, the Parties agree to its entry and agree to be bound by its  
25 terms.  
26

1 5. By entering into this Decree, the Parties do not intend to discharge non-settling  
2 parties from any liability they may have with respect to matters alleged in the Complaint. The  
3 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for  
4 sums expended under this Decree.

5 6. This Decree shall not be construed as proof of liability or responsibility for any  
6 releases of hazardous substances or cost for remedial action nor an admission of any facts;  
7 provided, however, that Defendants shall not challenge the authority of the Attorney General  
8 and Ecology to enforce this Decree.

9 7. The Court is fully advised of the reasons for entry of this Decree, and good cause  
10 having been shown:

11 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

12 **II. JURISDICTION**

13 1. This Court has jurisdiction over the subject matter and over the Parties pursuant  
14 to the Model Toxics Control Act (MTCA), RCW 70.105D. However, BNSF reserves the right  
15 to challenge the application of state law as being preempted by federal law, in the particular  
16 context and as prescribed in Sections VI.6 (Institutional Controls), XIII (Resolution of Disputes),  
17 XVII (Covenant Not to Sue), and XXII (Implementation of Remedial Action).

18 2. Authority is conferred upon the Washington State Attorney General by  
19 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,  
20 after public notice and any required hearing, Ecology finds the proposed settlement would lead  
21 to a more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that  
22 such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

23 3. Ecology has determined that a release or threatened release of hazardous  
24 substances has occurred at the Site that is the subject of this Decree.

25 4. Ecology has given notice to Defendants of Ecology's determination that  
26 Defendants are PLPs for the Site, as required by RCW 70.105D.020(26) and WAC 173-340-500.



1 deposited, stored, disposed of, or placed, or otherwise come to be located as the result of  
2 a release or releases from the fixtures, infrastructure, and equipment described in  
3 Section V.1.B. The Site is generally congruent with property located at 3202 East  
4 Wellesley Avenue in Spokane as shown in the Site Diagram (Exhibit A).

5 B. Consent Decree or Decree: Refers to this Consent Decree and each of the  
6 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent  
7 Decree.

8 C. Defendants: Refers to BNSF Railway Company (BNSF) and Marathon  
9 Oil Company (Marathon).

10 D. Parties: Refers to the State of Washington, Department of Ecology and  
11 Defendants.

## 12 V. FINDINGS OF FACT

13 1. Ecology makes the following findings of fact without any express or implied  
14 admissions of such facts by Defendants.

15 A. Based upon factors currently known to Ecology, the Site is generally  
16 congruent with property located at 3202 East Wellesley Avenue in Spokane as shown in  
17 the Site Diagram (Exhibit A). The Site consists of approximately 18 acres and is  
18 generally bounded by Market Street to the west, Wellesley Avenue to the north, Western  
19 States Asphalt Inc. and undeveloped land to the south, and the former Aluminum  
20 Recycling Corporation closed Site to the east.

21 B. This property was the location of a 50-foot diameter aboveground storage  
22 tank (the "Black Tank") and associated piping and pumping infrastructure that was in  
23 use from possibly as early as 1910 until final tank removal in 2006. At some point or  
24 points in time, a release or releases of petroleum products occurred to the environment  
25 from the Black Tank and other fixtures, infrastructure, or equipment known as the Red  
26

1 Tank dispensers, Liquid Asphalt Pipeline, Black Tank sump, and the Black Tank and  
2 Chemical Solution Pipelines and Dispensers.

3 C. In 2006, BNSF had the Black Tank decommissioned and removed from  
4 the Site. In addition, petroleum-contaminated soil was removed from beneath and  
5 adjacent to the Black Tank. The results of this effort and associated groundwater  
6 sampling are set forth in the following reports:

- 7 i. *Black Tank Removal, Remedial Excavation, and Supplemental*  
8 *Assessment Report*, dated May 14, 2008, prepared by  
9 GeoEngineers;
- 10 ii. *Black Tank Supplemental Well Installation and Groundwater*  
11 *Monitoring Report*, dated August 5, 2010, prepared by  
12 GeoEngineers;
- 13 iii. *Groundwater Monitoring Report, Third and Fourth Quarters*  
14 *2010*, dated March 28, 2011, prepared by GeoEngineers;
- 15 iv. *Groundwater Monitoring Report, First Quarter 2011*, dated  
16 July 8, 2011, prepared by GeoEngineers.

17 D. These reports document that surface and subsurface soil and groundwater  
18 samples were collected and analyzed, and groundwater monitoring wells were installed  
19 hydraulically upgradient and downgradient on and around the Site. Investigations have  
20 demonstrated that at least eight (8) wells downgradient and adjacent to the previous  
21 location of the Black Tank contain free product.

22 E. In certified correspondence dated October 5, 2011, Ecology notified  
23 BNSF of the preliminary finding of potential liability and requested comment on that  
24 finding.

25 F. In certified correspondence dated October 26, 2011, Ecology notified  
26 Marathon of the preliminary finding of potential liability and requested comment on that  
finding.

1 G. In certified correspondence dated November 9, 2011, Ecology notified  
2 BNSF of its status as a potentially liable person with regard to the release of hazardous  
3 substances at the Site.

4 H. In certified correspondence dated February 3, 2012, Ecology notified  
5 Marathon of its status as a potentially liable person with regard to the release of hazardous  
6 substances at the Site.

7 I. On August 23, 2012, the Parties entered into Agreed Order No. 9188,  
8 which required the Defendants to conduct a remedial investigation/feasibility study  
9 (RI/FS) for the Site. The Agreed Order was amended on July 12, 2018, to include an  
10 interim action for shallow soil contamination. On the effective date of this Consent  
11 Decree, any outstanding obligations under Agreed Order No. 9188, as amended, shall be  
12 subsumed within this Decree as provided in Sections VI and XXI of the Decree and the  
13 Agreed Order shall be deemed satisfied pursuant to Section IX of the Agreed Order.

14 J. The final RI/FS report, dated March 2017, and prepared by ERM-West,  
15 Inc., documented the nature and extent of hazardous substances in various media  
16 including soil and groundwater. The RI demonstrated the following contaminants of  
17 concern that exceed MTCA cleanup levels are present in soil at the Site: petroleum  
18 hydrocarbons (total, diesel, heavy oil, free product), naphthalene, and carcinogenic  
19 polycyclic aromatic hydrocarbons (cPAHs). Contaminants of concern in groundwater at  
20 the Site that exceed MTCA cleanup levels are petroleum hydrocarbons (total, diesel,  
21 heavy oil, free product) and cPAHs.

22 K. The Site is listed on Ecology's Hazardous Sites List as the "BNSF  
23 Railway Black Tank Property Site," Facility Site ID No. 98615712. In February 2001, a  
24 Site Hazard Assessment was completed by Ecology and the site was assigned an overall  
25 priority ranking of three (3) pursuant to WAC 173-340-330.  
26



1 L. As documented in the CAP (Exhibit B), Ecology has chosen a final  
2 cleanup action to be implemented at the Site.

3 **VI. WORK TO BE PERFORMED**

4 1. This Decree contains a program designed to protect human health and the  
5 environment from the known release, or threatened release, of hazardous substances or  
6 contaminants at, on, or from the Site. All remedial action(s) conducted by Defendants at the Site  
7 shall be done in accordance with WAC 173-340.

8 2. The Defendants shall implement the CAP (Exhibit B) in accordance with the  
9 Scope of Work and Schedule attached to this Decree (Exhibit C).

10 3. All plans or other deliverables submitted by Defendants for Ecology's review and  
11 approval under the CAP (Exhibit B) or Scope of Work and Schedule (Exhibit C) shall, upon  
12 Ecology's approval, become integral and enforceable parts of this Decree.

13 4. If Defendants learn of a significant change in conditions at the Site, including but  
14 not limited to a statistically significant increase in contaminant and/or chemical concentrations  
15 in soil or groundwater, Defendants, within seven (7) days of learning of the change in condition,  
16 shall notify Ecology in writing of said change and provide Ecology with any reports or records  
17 (including laboratory analyses, sampling results) relating to the change in conditions.

18 5. Pursuant to WAC 173-340-440(11), Defendants shall maintain sufficient and  
19 adequate financial assurance mechanisms to cover all costs associated with the operation and  
20 maintenance of the remedial action at the Site, including institutional controls, compliance  
21 monitoring, corrective measures, and contingent remedial technology.

22 A. Within ninety (90) days of the effective date of this Decree, Defendants  
23 shall submit to Ecology for review and approval an estimate of the costs associated with  
24 the operation and maintenance of the remedial action at the Site that it will incur in  
25 carrying out the terms of this Decree. Within sixty (60) days after Ecology approves the  
26 aforementioned cost estimate, or by March 31, 2020, whichever occurs later, Defendants

1 shall provide proof of financial assurances sufficient to cover those costs in a form  
2 acceptable to Ecology.

3 B. Defendants shall adjust the financial assurance coverage and provide  
4 Ecology's project coordinator with documentation of the updated financial assurance for:

5 i. Inflation, annually, within thirty (30) days of the anniversary date  
6 of the entry of this Decree; or if applicable, the modified anniversary date  
7 established in accordance with this section, or if applicable, ninety (90) days after  
8 the close of Defendants' fiscal year if the financial test or corporate guarantee is  
9 used.

10 ii. Changes in cost estimates, within thirty (30) days of issuance of  
11 Ecology's approval of a modification or revision to the CAP that result in  
12 increases to the cost or expected duration of remedial actions. Any adjustments  
13 for inflation since the most recent preceding anniversary date shall be made  
14 concurrent with adjustments for changes in cost estimates. The issuance of  
15 Ecology's approval of a revised or modified CAP will revise the anniversary date  
16 established under this section to become the date of issuance of such revised or  
17 modified CAP.

18 C. Any Defendant may submit, at any time, a request to reduce the amount,  
19 or change the form or terms, of the financial assurance mechanism. Any such request  
20 must include an explanation of the bases for the request, an estimate of the cost of the  
21 remaining remedial action, an explanation of the bases for the cost calculation, and a  
22 description of the proposed changes, if any, to the form or terms of the financial  
23 assurance. Ecology will notify Defendant(s) of its decision to approve or disapprove a  
24 requested reduction or change pursuant to this section. A Defendant may reduce the  
25 amount of the financial assurance mechanism only in accordance with: (a) Ecology's  
26 approval; or (b) if there is a dispute, the agreement, final administrative decision, or final

1 judicial decision resolving such dispute under Section XIII (Resolution of Disputes).  
2 Within thirty (30) days after receipt of Ecology's approval of, or the agreement or  
3 decision resolving a dispute relating to, the requested modifications pursuant to this  
4 section, a Defendant shall submit to Ecology documentation of the reduced, revised, or  
5 alternative financial assurance mechanism in accordance with this section.

6 D. Defendants may release, cancel, or discontinue any financial assurance  
7 provided under this section only after receiving a written notification from Ecology that  
8 the requirements of this Decree have been satisfactorily completed or if there is a dispute  
9 regarding the release, cancellation or discontinuance of any financial assurance  
10 mechanism, in accordance with the agreement, final administrative decision, or final  
11 judicial decision resolving such dispute under Section XIII (Resolution of Disputes).

12 E. All financial assurance submittals and correspondence should be directed  
13 to both Ecology's project coordinator and Ecology's financial assurance officer.  
14 Ecology's current financial assurance officer is:

15 Kimberly Goetz  
16 Department of Ecology  
17 Hazardous Waste and Toxics Reduction Program  
18 P.O. Box 47600  
19 Olympia, WA 98504-7600  
20 Phone: 360-407-6754  
21 Fax: 360-407-6715  
22 E-mail: kimberly.goetz@ecy.wa.gov

23 6. As detailed in the CAP, institutional controls are required at the Site. Institutional  
24 controls will be identified in the Engineering Design Report, which will be submitted to Ecology  
25 for review and approval and implemented in accordance with the Scope of Work and Schedule  
26 (Exhibit C). Institutional controls will include an Environmental (Restrictive) Covenant  
prohibiting excavation of contaminated soil or the extraction of contaminated groundwater for  
purposes other than remediation and restricting future activities and uses of the Site as agreed to  
by Ecology and Defendants.

1           A.     In consultation with Defendants, Ecology will prepare the Environmental  
2 (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70 (Uniform  
3 Environmental Covenants Act), and any policies or procedures specified by Ecology.

4           B.     After approval by Ecology, Defendants shall record the Environmental  
5 (Restrictive) Covenant for affected properties they own with the office of the Spokane  
6 County Auditor as detailed in the Scope of Work and Schedule (Exhibit C). Defendants  
7 shall provide Ecology with the original recorded Environmental (Restrictive) Covenants  
8 within thirty (30) days of the recording date.

9           C.     BNSF reserves the right to challenge the provisions of institutional  
10 controls as being preempted by federal law, as provided in Section XIII of this Decree.

11         7.     Defendants shall submit to Ecology written Progress Reports that describe the  
12 actions taken during the previous reporting period to implement the requirements of this Decree.  
13 All Progress Reports shall be submitted by the tenth (10th) day of the month in which they are  
14 due after the effective date of this Decree. Unless otherwise directed by Ecology, progress reports  
15 will be submitted quarterly from the effective date of this Decree through the first year of  
16 operation of the bioventing/biosparging system and semi-annually thereafter through completion  
17 of the remedial action. Ecology may direct Defendants to change the reporting frequency if site  
18 activities warrant. Unless otherwise specified in writing by Ecology, Progress Reports and any  
19 other documents submitted pursuant to this Decree shall be sent by first class mail and e-mail to  
20 Ecology's project coordinator. The Progress Reports shall include the following:

21           A.     A list of on-site activities that have taken place during the month.

22           B.     Description of any sample results which deviate from the norm.

23           C.     Description of any deviations from required tasks not otherwise  
24 documented in project plans or amendment requests.

25           D.     Description of all deviations from the Scope of Work and Schedule  
26 (Exhibit C) during the current month and any planned deviations in the upcoming month.

1 E. For any deviations in schedule, a plan for recovering lost time and  
2 maintaining compliance with the schedule, when practicable.

3 F. All raw data (including laboratory analyses) received during the previous  
4 quarter (if not previously submitted to Ecology), together with a detailed description of  
5 the underlying samples collected.

6 G. A list of planned activities for the upcoming month.

7 8. Except in the case of an emergency, Defendants agree not to perform any  
8 remedial actions at the Site outside the scope of this Decree without prior written approval of  
9 Ecology. In the case of an emergency, Defendants must notify Ecology of the event and remedial  
10 action(s) as soon as practical, but no later than twenty-four (24) hours after discovery of the  
11 emergency.

## 12 VII. DESIGNATED PROJECT COORDINATORS

13 1. The project coordinator for Ecology is:

14 Jeremy Schmidt, P.E.  
15 4601 N. Monroe Street  
16 Spokane, WA 99205-1295  
17 Phone: 509-329-3484  
18 E-mail: jeremy.schmidt@ecy.wa.gov

19 2. The project coordinators for Defendants are:

20 For BNSF:  
21 Shane DeGross  
22 BNSF Railway Company  
23 605 Puyallup Avenue  
24 Tacoma, WA 98134  
25 Phone: 253-591-2567  
26 E-mail: Shane.DeGross@BNSF.com

For Marathon:  
Renée Bellavance  
Senior Environmental Advisor, Corporate Responsibility  
Husky Oil Operations Limited  
707 8th Avenue S.W.  
Box 6525, Station D

1 Calgary, AB T2P 3G7  
2 Phone: 403-298-6278 Cell: 587-226-6561  
3 E-mail: Renee.Bellavance@huskyenergy.com

3 3. Each project coordinator shall be responsible for overseeing the implementation  
4 of this Decree. Ecology's project coordinator will be Ecology's designated representative for the  
5 Site. To the maximum extent possible, communications between Ecology and Defendants and  
6 all documents, including reports, approvals, and other correspondence concerning the activities  
7 performed pursuant to the terms and conditions of this Decree shall be directed through the  
8 project coordinators. The project coordinators may designate, in writing, working level staff  
9 contacts for all or portions of the implementation of the work to be performed required by this  
10 Decree.

11 4. Any party may change its respective project coordinator. Written notification  
12 shall be given to the other party at least ten (10) calendar days prior to the change.

### 13 **VIII. PERFORMANCE**

14 1. Except as otherwise provided for by RCW 18.43 and 18.220, all geologic and  
15 hydrogeologic work performed pursuant to this Decree shall be under the supervision and  
16 direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct  
17 supervision of an engineer registered by the State of Washington.

18 2. Except as otherwise provided for by RCW 18.43.130, all engineering work  
19 performed pursuant to this Decree shall be under the direct supervision of a professional engineer  
20 registered by the State of Washington.

21 3. Except as otherwise provided for by RCW 18.43.130, all construction work  
22 performed pursuant to this Decree shall be under the direct supervision of a professional engineer  
23 registered by the State of Washington or a qualified technician under the direct supervision of a  
24 professional engineer registered by the State of Washington.

1 4. As required by RCW 18.43 and 18.220, any documents submitted containing  
2 geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed  
3 professional.

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

### 7 IX. ACCESS

8 1. Ecology or any Ecology authorized representative shall have access to enter and  
9 freely move about all property at the Site that Defendants either own, control, or have access  
10 rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs,  
11 and contracts related to the work being performed pursuant to this Decree; reviewing  
12 Defendants' progress in carrying out the terms of this Decree; conducting such tests or collecting  
13 such samples as Ecology may deem necessary; using a camera, sound recording, or other  
14 documentary type equipment to record work done pursuant to this Decree; and verifying the data  
15 submitted to Ecology by Defendants.

16 2. Nothing in this Decree is intended by the Defendants to waive any right they may  
17 have under applicable law to limit disclosure of documents protected by the attorney work-  
18 product privilege and/or the attorney-client privilege. If Defendants withhold any requested  
19 records based on an assertion of privilege, they shall provide Ecology with a privilege log  
20 specifying the records withheld and the applicable privilege. No Site-related data collected  
21 pursuant to this Decree shall be considered privileged.

22 3. Defendants shall make all reasonable efforts to secure access rights for those  
23 properties within the Site not owned or controlled by Defendants where remedial activities or  
24 investigations will be performed pursuant to this Decree.

25 4. Ecology or any Ecology authorized representative shall give reasonable notice  
26 before entering any Site property owned or controlled by Defendants unless an emergency

1 prevents such notice. All Parties who access the Site pursuant to this section shall comply with  
2 any applicable health and safety plan(s). Ecology employees and their representatives shall not  
3 be required to sign any liability release or waiver as a condition of Site property access. All  
4 persons who access BNSF's railyard property will be required to complete BNSF's Contractor  
5 Safety Training Program ([www.BNSFcontractor.com](http://www.BNSFcontractor.com)), unless they are escorted by someone  
6 who has completed the program.

#### 7 **X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

8 1. With respect to the implementation of this Decree, Defendants shall make the  
9 results of all sampling, laboratory reports, and/or test results generated by them or on their behalf  
10 available to Ecology by submitting data as detailed in this section. Pursuant to WAC 173-340-  
11 840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in  
12 accordance with Section VI.7 (Progress Reports), Ecology's Toxics Cleanup Program  
13 Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by  
14 Ecology for data submittal.

15 2. If requested by Ecology, Defendants shall allow Ecology and/or its authorized  
16 representative to take split or duplicate samples of any samples collected by Defendants pursuant  
17 to the implementation of this Decree. Defendants shall notify Ecology seven (7) days in advance  
18 of any sample collection or work activity at the Site. Ecology shall, upon request, allow  
19 Defendants and/or their authorized representative to take split or duplicate samples of any  
20 samples collected by Ecology pursuant to the implementation of this Decree, provided that doing  
21 so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under  
22 Section IX (Access), Ecology shall notify Defendants prior to any sample collection activity  
23 unless an emergency prevents such notice.

24 3. In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses  
25 shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be  
26 conducted, unless otherwise approved by Ecology.



1 **XI. RETENTION OF RECORDS**

2 1. During the pendency of this Decree, and for ten (10) years from the date this  
3 Decree is no longer in effect as provided in Section XXV (Duration of Decree), Defendants shall  
4 preserve all records, reports, documents, and underlying data in their possession relevant to the  
5 implementation of this Decree. Defendants shall provide copies of this Decree to project  
6 contractors and subcontractors and give them written instruction to preserve records, reports,  
7 documents, and underlying data as required by this Decree. Maintenance of records in electronic  
8 Portable Document Format (PDF) shall be deemed compliant with the requirements in this  
9 section. Upon request of Ecology, Defendants shall make all records available to Ecology and  
10 allow access for review within a reasonable time.

11 2. Nothing in this Decree is intended by Defendants to waive any right they may  
12 have under applicable law to limit disclosure of documents protected by the attorney work-  
13 product privilege and/or the attorney-client privilege. If Defendants withhold any requested  
14 records based on an assertion of privilege, Defendants shall provide Ecology with a privilege log  
15 specifying the records withheld and the applicable privilege. No Site-related data collected  
16 pursuant to this Decree shall be considered privileged.

17 **XII. TRANSFER OF INTEREST IN PROPERTY**

18 1. No voluntary conveyance or relinquishment of title, easement, leasehold, or other  
19 interest in any portion of the Site shall be consummated by BNSF without provision for  
20 continued operation and maintenance of any containment system, treatment system, and/or  
21 monitoring system installed or implemented pursuant to this Decree.

22 2. Prior to BNSF's transfer of any interest in all or any portion of the Site, and during  
23 the effective period of this Decree, BNSF shall provide a copy of this Decree to any prospective  
24 purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30)  
25 days prior to any transfer, BNSF shall notify Ecology of said transfer. Upon their transfer of any  
26

1 interest, BNSF shall notify all transferees of the restrictions on the activities and uses of the  
2 property under this Decree and incorporate any such use restrictions into the transfer documents.

3 3. The parties acknowledge that BNSF and the Washington State Department of  
4 Transportation (WSDOT) are negotiating a transfer of property under which WSDOT will have  
5 a long-term easement over part of the Site. A definitive agreement is expected to be signed in  
6 2019.

7 4. As of the date of entry of this Decree, Marathon does not hold title, easement,  
8 leasehold, or other interest in any portion of the Site. In the event Marathon obtains any such  
9 interest in any portion of the Site, the provisions of this Section shall also apply to Marathon.

### 10 **XIII. RESOLUTION OF DISPUTES**

11 1. In the event that Defendants elect to invoke dispute resolution, Defendants must  
12 utilize the procedure set forth below.

13 A. Upon the triggering event (receipt of Ecology's project coordinator's  
14 written decision or an itemized billing statement), Defendants have fourteen (14)  
15 calendar days within which to notify Ecology's project coordinator in writing of its  
16 dispute (Informal Dispute Notice).

17 B. The Parties' project coordinators shall then confer in an effort to resolve  
18 the dispute informally. The parties shall informally confer for up to fourteen (14)  
19 calendar days from receipt of the Informal Dispute Notice. If the project coordinators  
20 cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar  
21 days Ecology's project coordinator shall issue a written decision (Informal Dispute  
22 Decision) stating: the nature of the dispute; the Defendants' position with regards to the  
23 dispute; Ecology's position with regards to the dispute; and the extent of resolution  
24 reached by informal discussion.

25 C. Defendants may then request regional management review of the dispute.  
26 This request (Formal Dispute Notice) must be submitted in writing to the Eastern Region

1 Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's  
2 Informal Dispute Decision. The Formal Dispute Notice shall include a written statement  
3 of dispute setting forth: the nature of the dispute; the disputing Party's position with  
4 respect to the dispute; and the information relied upon to support its position.

5 D. The Section Manager shall conduct a review of the dispute and shall issue  
6 a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar  
7 days of receipt of the Formal Dispute Notice.

8 E. If Defendants find Ecology's Regional Section Manager's decision  
9 unacceptable, Defendants may then request final management review of the decision.  
10 This request (Final Review Request) shall be submitted in writing to the Toxics Cleanup  
11 Program Manager within seven (7) calendar days of Defendants' receipt of the Decision  
12 on Dispute. The Final Review Request shall include a written statement of dispute setting  
13 forth: the nature of the dispute; the disputing Party's position with respect to the dispute;  
14 and the information relied upon to support its position.

15 F. Ecology's Toxics Cleanup Program Manager shall conduct a review of  
16 the dispute and shall issue a written decision regarding the dispute (Final Decision on  
17 Dispute) within thirty (30) calendar days of receipt of the Final Review Request. The  
18 Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the  
19 disputed matter.

20 2. If Ecology's Final Decision on Dispute is unacceptable to Defendants,  
21 Defendants have the right to submit the dispute to the Court for resolution. The Parties agree that  
22 one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute  
23 arising under this Decree. Under RCW 70.105D.060, Ecology's investigative and remedial  
24 decisions shall be upheld unless they are arbitrary and capricious. BNSF additionally reserves  
25 the right to challenge any Ecology decision not to grant a schedule extension under Section XV  
26 (Extension of Schedule), or to apply land use restrictions (institutional controls) on BNSF's

1 property under Section VI.6, as being preempted by federal law. Any schedule extension or  
2 change to Ecology's decision resulting from BNSF's challenge shall likewise modify  
3 Marathon's obligations under this Decree.

4 3. The Parties agree to only utilize the dispute resolution process in good faith and  
5 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.  
6 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,  
7 the other party may seek sanctions.

8 4. Implementation of these dispute resolution procedures shall not provide a basis  
9 for delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule  
10 extension or the Court so orders.

11 5. In case of a dispute, failure to either proceed with the work required by this  
12 Decree or timely invoke dispute resolution may result in Ecology's determination that  
13 insufficient progress is being made in preparation of a deliverable, and may result in Ecology  
14 undertaking the work under Section XXII (Implementation of Remedial Action).

#### 15 **XIV. AMENDMENT OF DECREE**

16 1. The Parties may agree to minor changes to the work to be performed without  
17 formally amending this Decree. Minor changes will be documented in writing by Ecology.

18 2. Substantial changes to the work to be performed shall require formal amendment  
19 of this Decree. This Decree may only be formally amended by a written stipulation among the  
20 Parties that is entered by the Court, or by order of the Court. Ecology will provide its written  
21 consent to a formal amendment only after public notice and opportunity to comment on the  
22 formal amendment. Such amendment shall become effective upon entry by the Court.  
23 Agreement to amend the Decree shall not be unreasonably withheld by any party.

24 3. When requesting a change to the Decree, Defendants shall submit a written  
25 request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing  
26 and in a timely manner after the written request is received. If Ecology determines that the

1 change is substantial, then the Decree must be formally amended. Reasons for the disapproval  
2 of a proposed change to this Decree shall be stated in writing. If Ecology does not agree to the  
3 requested change, the disagreement may be addressed through the dispute resolution procedures  
4 described in Section XIII (Resolution of Disputes).

#### 5 **XV. EXTENSION OF SCHEDULE**

6 1. Defendants' request for an extension of schedule shall be granted only when a  
7 request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior  
8 to expiration of the deadline for which the extension is requested, and good cause exists for  
9 granting the extension. All extensions shall be requested in writing. The request shall specify:

10 A. The deadline that is sought to be extended.

11 B. The length of the extension sought.

12 C. The reason(s) for the extension.

13 D. Any related deadline or schedule that would be affected if the extension  
14 were granted.

15 2. The burden shall be on Defendants to demonstrate to the satisfaction of Ecology  
16 that the request for such extension has been submitted in a timely fashion and that good cause  
17 exists for granting the extension. Good cause may include, but may not be limited to:

18 A. Circumstances beyond the reasonable control and despite the due  
19 diligence of Defendants including delays caused by unrelated third parties or Ecology,  
20 such as (but not limited to) delays by Ecology in reviewing, approving, or modifying  
21 documents submitted by Defendants.

22 B. Acts of God, including fire, flood, blizzard, extreme temperatures, storm,  
23 or other unavoidable casualty.

24 C. Endangerment as described in Section XVI (Endangerment).

25 D. For BNSF, unanticipated circumstances that would cause scheduled  
26 cleanup actions, if not rescheduled, to unduly restrict mainline operations or to

1 unreasonably burden interstate commerce. Any determination of good cause as to BNSF,  
2 however, shall likewise apply to Marathon's obligations under this Decree.

3 3. However, neither increased costs of performance of the terms of this Decree nor  
4 changed economic circumstances shall be considered circumstances beyond the reasonable  
5 control of Defendants.

6 4. Ecology shall act upon any Defendants' written request for extension in a timely  
7 fashion. Ecology shall give Defendants written notification of any extensions granted pursuant  
8 to this Decree. A requested extension shall not be effective until approved by Ecology or, if  
9 required, by the Court. Unless the extension is a substantial change, it shall not be necessary to  
10 amend this Decree pursuant to Section XIV (Amendment of Decree) when a schedule extension  
11 is granted.

12 5. At Defendants' request an extension shall only be granted for such period of time  
13 as Ecology determines is reasonable under the circumstances. Ecology may grant schedule  
14 extensions exceeding ninety (90) days only as a result of one of the following:

15 A. Delays in the issuance of a necessary permit which was applied for in a  
16 timely manner.

17 B. Other circumstances deemed exceptional or extraordinary by Ecology,  
18 which may include the circumstances described in subsection 2.A–D above.

## 19 **XVI. ENDANGERMENT**

20 1. In the event Ecology determines that any activity being performed at the Site  
21 under this Decree is creating or has the potential to create a danger to human health or the  
22 environment, Ecology may direct Defendants to cease such activities for such period of time as  
23 it deems necessary to abate the danger. Defendants shall immediately comply with such  
24 direction.

25 2. In the event Defendants determine that any activity being performed at the Site  
26 under this Decree is creating or has the potential to create a danger to human health or the

1 environment, Defendants may cease such activities. Defendants shall notify Ecology's project  
2 coordinator as soon as possible, but no later than twenty-four (24) hours after making such  
3 determination or ceasing such activities. Upon Ecology's direction, Defendants shall provide  
4 Ecology with documentation of the basis for the determination or cessation of such activities. If  
5 Ecology disagrees with Defendants' cessation of activities, it may direct Defendants to resume  
6 such activities.

7 3. If Ecology concurs with or orders a work stoppage pursuant to this section,  
8 Defendants' obligations with respect to the ceased activities shall be suspended until Ecology  
9 determines the danger is abated, and the time for performance of such activities, as well as the  
10 time for any other work dependent upon such activities, shall be extended, in accordance with  
11 Section XV (Extension of Schedule), for such period of time as Ecology determines is reasonable  
12 under the circumstances.

13 4. Nothing in this Decree shall limit the authority of Ecology, its employees, agents,  
14 or contractors to take or require appropriate action in the event of an emergency.

## 15 **XVII. COVENANT NOT TO SUE**

16 1. Covenant Not to Sue: In consideration of Defendants' compliance with the terms  
17 and conditions of this Decree, Ecology covenants not to institute legal or administrative actions  
18 against Defendants regarding the release or threatened release of hazardous substances at the  
19 Site, as defined in Section IV (Definitions) and as described in Section V (Findings of Fact).  
20 This Covenant Not to Sue does not cover any other hazardous substance(s) or area. Ecology  
21 retains all of its authority relative to any hazardous substance(s) or area not covered by this  
22 Decree.

23 This Covenant Not to Sue shall have no applicability whatsoever to:

- 24 A. Criminal liability.
  - 25 B. Liability for damages to natural resources.
- 26

1 C. Any Ecology action, including cost recovery, against PLPs not a party to  
2 this Decree.

3 2. Pursuant to RCW 70.105D.040(4)(c), the Court shall amend this Covenant Not  
4 to Sue if factors not known at the time of entry of this Decree are discovered and present a  
5 previously unknown threat to human health or the environment.

6 3. Reopeners: Ecology specifically reserves the right to institute legal or  
7 administrative action against Defendants to require it to perform additional remedial actions at  
8 the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050, under any of  
9 the following circumstances:

10 A. Upon Defendants' failure to meet the requirements of this Decree.

11 B. Failure of the remedial action to meet the cleanup standards identified in  
12 the CAP (Exhibit B).

13 C. Upon Ecology's determination that remedial action beyond the terms of  
14 this Decree is necessary to abate an imminent and substantial endangerment to human  
15 health or the environment.

16 D. Upon the availability of information previously unknown to Ecology  
17 regarding Site factors including the nature, quantity, migration, pathway, or mobility of  
18 hazardous substances, and Ecology's determination, in light of this information, that  
19 further remedial action is necessary at the Site to protect human health or the  
20 environment.

21 E. Upon Ecology's determination that additional remedial actions are  
22 necessary to achieve cleanup standards within the reasonable restoration time frame set  
23 forth in the CAP.

24 4. Except in the case of an emergency, prior to instituting legal or administrative  
25 action against Defendants pursuant to this section, Ecology shall provide Defendants with fifteen  
26 (15) calendar days' notice of such action. In the event Ecology seeks to reopen the Decree under



1 this section, BNSF reserves its right to challenge the imposition of different or additional cleanup  
2 actions as being preempted by federal law. However, if a reopening event occurs, Defendants  
3 and Ecology agree to first explore in good faith whether different or additional actions that the  
4 Parties agree would not be subject to preemption could be implemented to address the reopening  
5 event. All Parties then reserve their right to all claims and defenses if good faith efforts to agree  
6 to different or additional actions do not result in agreement between the Parties. Nevertheless,  
7 BNSF agrees the Court shall have jurisdiction to decide the controversy. Any limitation on  
8 Ecology's ability to impose different or additional cleanup actions on BNSF based on BNSF's  
9 preemption challenge shall likewise limit Ecology's ability to impose such different or additional  
10 cleanup actions on Marathon.

#### 11 **XVIII. CONTRIBUTION PROTECTION**

12 1. With regard to claims for contribution against Defendants, the Parties agree that  
13 Defendants are entitled to protection against claims for contribution for matters addressed in this  
14 Decree as provided by RCW 70.105D.040(4)(d). For purposes of this section, the "matters  
15 addressed" in this Decree are hazardous substances released at the Site as defined in Section IV  
16 (Definitions) and as described in Section V (Findings of Fact), including from the Black Tank  
17 and associated piping and pumping infrastructure that was in use from possibly as early as 1910  
18 until final tank removal in 2006, as well as all investigations and remedial or interim actions  
19 taken or to be taken and all costs incurred or to be incurred, at or in connection with such  
20 hazardous substances within the scope of this Decree.

#### 21 **XIX. INDEMNIFICATION**

22 1. Defendants agree to indemnify and save and hold the State of Washington, its  
23 employees, and agents harmless from any and all claims or causes of action (1) for death or  
24 injuries to persons, or (2) for loss or damage to property to the extent arising from or on account  
25 of acts or omissions of Defendants, its officers, employees, agents, or contractors in entering into  
26 and implementing this Decree. However, Defendants shall not indemnify the State of

1 Washington nor save nor hold its employees and agents harmless from any claims or causes of  
2 action to the extent arising out of the negligent acts or omissions of the State of Washington, or  
3 the employees or agents of the State, in entering into or implementing this Decree.

#### 4 **XX. COMPLIANCE WITH APPLICABLE LAWS**

5 1. *Applicable Law.* All actions carried out by Defendants pursuant to this Decree  
6 shall be done in accordance with all applicable federal, state, and local requirements, including  
7 requirements to obtain necessary permits, except as provided in RCW 70.105D.090. The permits  
8 or specific federal, state, or local requirements that the agency has determined are applicable and  
9 that are known at the time of the execution of this Decree have been identified in Exhibit B.  
10 Defendants have a continuing obligation to identify additional applicable federal, state, and local  
11 requirements which apply to actions carried out pursuant to this Decree, and to comply with  
12 those requirements. As additional federal, state, and local requirements are identified by Ecology  
13 or the Defendants, Ecology will document in writing if they are applicable to actions carried out  
14 pursuant to this Decree, and the Defendants must implement those requirements.

15 2. *Relevant and Appropriate Requirements.* All actions carried out by Defendants  
16 pursuant to this Decree shall be done in accordance with relevant and appropriate requirements  
17 identified by Ecology. The relevant and appropriate requirements that Ecology has determined  
18 apply have been identified in Exhibit B. If additional relevant and appropriate requirements are  
19 identified by Ecology or the Defendants, Ecology will document in writing if they are applicable  
20 to actions carried out pursuant to this Decree and the Defendants must implement those  
21 requirements.

22 3. Pursuant to RCW 70.105D.090(1), Defendants are, subject to Section XX.5  
23 below, exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48,  
24 and 90.58 and of any laws requiring or authorizing local government permits or approvals.  
25 However, Defendants shall comply with the substantive requirements of such permits or  
26 approvals. For permits and approvals covered under RCW 70.105D.090(1) that have been issued

1 by local government, the Parties agree that Ecology has the non-exclusive ability under this  
2 Decree to enforce those local government permits and/or approvals. At this time, no state or local  
3 permits or approvals have been identified as being applicable but procedurally exempt under this  
4 section.

5 4. Defendants have a continuing obligation to determine whether additional permits  
6 or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial  
7 action under this Decree. In the event either Ecology or Defendants determine that additional  
8 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the  
9 remedial action under this Decree, it shall promptly notify the other party of its determination.  
10 Ecology shall determine whether Ecology or Defendants shall be responsible to contact the  
11 appropriate state and/or local agencies. If Ecology so requires, Defendants shall promptly consult  
12 with the appropriate state and/or local agencies and provide Ecology with written documentation  
13 from those agencies of the substantive requirements those agencies believe are applicable to the  
14 remedial action. Ecology shall make the final determination on the additional substantive  
15 requirements that must be met by Defendants and on how Defendants must meet those  
16 requirements. Ecology shall inform Defendants in writing of these requirements. Once  
17 established by Ecology, the additional requirements shall be enforceable requirements of this  
18 Decree. Defendants shall not begin or continue the remedial action potentially subject to the  
19 additional requirements until Ecology makes its final determination.

20 5. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the  
21 exemption from complying with the procedural requirements of the laws referenced in  
22 RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary  
23 for the state to administer any federal law, the exemption shall not apply and Defendants shall  
24 comply with both the procedural and substantive requirements of the laws referenced in  
25 RCW 70.105D.090(1), including any requirements to obtain permits or approvals.  
26

1           6. For any payments made and work performed pursuant to this Decree, Ecology  
2 shall provide the Defendants with review and comment on any return or other form to be filed  
3 pursuant to Internal Revenue Code Section 6050X (“Section 6050X”). Ecology shall provide the  
4 Defendants with such return or other form at least thirty (30) days prior to the due date required  
5 by Section 6050X.

## 6   **XXI. REMEDIAL ACTION COSTS**

7           1. Defendants shall pay to Ecology costs incurred by Ecology pursuant to this  
8 Decree and consistent with WAC 173-340-550(2). These costs shall include work performed by  
9 Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial actions  
10 and Decree preparation, negotiation, oversight, and administration. These costs shall include  
11 work performed both prior to and subsequent to the entry of this Decree. Ecology’s costs shall  
12 include costs of direct activities and support costs of direct activities as defined in  
13 WAC 173-340-550(2). For all costs incurred, Defendants shall pay the required amount within  
14 thirty (30) days of receiving from Ecology an itemized statement of costs that includes a  
15 summary of costs incurred, an identification of involved staff, and the amount of time spent by  
16 involved staff members on the project. A general statement of work performed will be provided  
17 upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-  
18 550(4), failure to pay Ecology’s costs within ninety (90) days of receipt of the itemized statement  
19 of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded  
20 monthly.

21          2. In addition to other available relief, pursuant to RCW 19.16.500, Ecology  
22 reserves the authority to utilize a collection agency and/or, pursuant to RCW 70.105D.055, file  
23 a lien against real property subject to the remedial actions to recover unreimbursed remedial  
24 action costs.

25  
26

1 **XXII. IMPLEMENTATION OF REMEDIAL ACTION**

2 1. If Ecology determines that the Defendants have failed without good cause to  
3 make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology  
4 may, after notice to Defendants, perform any or all portions of the remedial action or at Ecology's  
5 discretion allow the Defendants opportunity to correct. If Ecology performs all or portions of the  
6 remedial action because of the Defendants failure to comply with their obligations under this  
7 Decree, the Defendants shall reimburse Ecology for the costs of doing such work in accordance  
8 with Section XXI (Remedial Action Costs), provided that, without waiving Ecology's authority  
9 to seek reimbursement pursuant to RCW 70.105D.050(3), the Defendants are not obligated under  
10 this section to reimburse Ecology for costs incurred for work inconsistent with or beyond the  
11 scope of this Decree. The Defendants and Ecology agree to meet and confer to informally resolve  
12 any dispute about performance of the remedial action, before Ecology exercises its option under  
13 this section, provided that in an emergency, Ecology is not required to provide notice to  
14 Defendants, or an opportunity for dispute resolution. If the Parties cannot agree to a resolution,  
15 BNSF reserves the right to seek an injunction from the Court to prevent Ecology from  
16 performing any cleanup actions on BNSF's railyard facility property that would be preempted  
17 under federal law. BNSF agrees the Court shall have jurisdiction to decide the controversy.

18 2. Except where necessary to abate an emergency situation or where required by  
19 law, the Defendants shall not perform any remedial actions at the Site outside those remedial  
20 actions required by this Decree to address the contamination that is the subject of this Decree,  
21 unless Ecology concurs, in writing, with such additional remedial actions pursuant to  
22 Section XIV (Amendment of Decree). In the event of an emergency, or where actions are taken  
23 as required by law, Defendants must notify Ecology in writing of the event and remedial action(s)  
24 planned or taken as soon as practical after the discovery of the event, which shall generally be  
25 no later than within twenty-four (24) hours of such discovery.

1 **XXIII. PERIODIC REVIEW**

2 1. So long as remedial action continues at the Site, the Parties agree to review the  
3 progress of remedial action at the Site, and to review the data accumulated as a result of  
4 monitoring the Site as often as is necessary and appropriate under the circumstances. As shown  
5 in Table 6 of Exhibit B, periodic reviews will be performed annually after the initiation of  
6 cleanup action at the Site. The frequency of the periodic reviews can be revised to every five (5)  
7 years with Ecology’s approval. During each periodic review, Parties shall confer regarding the  
8 status of the Site and the need, if any, for further remedial action at the Site. Under Section XVII  
9 (Covenant Not to Sue), Ecology reserves the right to require further remedial action at the Site  
10 under appropriate circumstances. This provision shall remain in effect for the duration of this  
11 Decree.

12 **XXIV. PUBLIC PARTICIPATION**

13 1. Ecology shall maintain the responsibility for public participation at the Site.  
14 However, Defendants shall cooperate with Ecology, and shall:

15 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts  
16 of public notices and fact sheets at important stages of the remedial action, such as the  
17 submission of work plans, remedial investigation/feasibility study reports, cleanup action  
18 plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and  
19 distribute such fact sheets and prepare and distribute public notices of Ecology’s  
20 presentations and meetings.

21 B. Notify Ecology’s project coordinator prior to the preparation of all press  
22 releases and fact sheets, and before meetings related to remedial action work to be  
23 performed at the Site with the interested public and/or local governments. Likewise,  
24 Ecology shall notify Defendants seven (7) days prior to the issuance of all press releases  
25 and fact sheets related to remedial action work to be performed at the Site, and before  
26 meetings related to remedial action work to be performed at the Site with the interested

1 public and/or local governments. For all press releases, fact sheets, meetings, and other  
2 outreach efforts by Defendants that do not receive prior Ecology approval, Defendants  
3 shall clearly indicate to its audience that the press release, fact sheet, meeting, or other  
4 outreach effort was not sponsored or endorsed by Ecology.

5 C. When requested by Ecology, participate in public presentations on the  
6 progress of the remedial action at the Site. Participation may be through attendance at  
7 public meetings to assist in answering questions, or as a presenter.

8 D. When requested by Ecology, arrange and/or continue information  
9 repositories at the following locations:

- 10 i. Spokane Public Library, Hillyard Branch  
11 4005 N. Cook Street  
Spokane, WA 99207
- 12 ii. Ecology's Eastern Regional Office  
13 4601 N. Monroe Street  
Spokane, WA 99205-1295
- 14 iii. Ecology's Website  
15 <https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=3243>

16 At a minimum, copies of all public notices, fact sheets, and documents relating to public  
17 comment periods shall be promptly placed in these repositories. A copy of all documents related  
18 to this Site shall be maintained in the repository at Ecology's Eastern Regional Office in  
19 Spokane, Washington.

## 20 **XXV. DURATION OF DECREE**

21 1. The remedial program required pursuant to this Decree shall be maintained and  
22 continued until Defendants have received written notification from Ecology that the  
23 requirements of this Decree have been satisfactorily completed. This Decree shall remain in  
24 effect until dismissed by the Court. When dismissed, Section XI (Retention of Records), and  
25 Section XVII (Covenant Not to Sue) shall survive.  
26

1 **XXVI. CLAIMS AGAINST THE STATE**

2 1. Defendants hereby agree that they will not seek to recover any costs accrued in  
3 implementing the remedial action required by this Decree from the State of Washington or any  
4 of its agencies except as provided in contractual arrangements between BNSF and the  
5 Washington State Department of Transportation; and further, that Defendants will make no claim  
6 against the State Toxics Control Account, the Local Toxics Control Account, the Environmental  
7 Legacy Stewardship Account, or a MTCA Cleanup Settlement Account for any costs incurred  
8 in implementing this Decree. Except as provided above, however, Defendants expressly reserve  
9 their right to seek to recover any costs incurred in implementing this Decree from any other PLP.  
10 This section does not limit or address funding that may be provided under WAC 173-322A.

11 **XXVII. EFFECTIVE DATE**

12 1. This Decree is effective upon the date it is entered by the Court.

13 **XXVIII. WITHDRAWAL OF CONSENT**

14 1. If the Court withholds or withdraws its consent to this Decree, it shall be null and  
15 void at the option of any party and the accompanying Complaint shall be dismissed without costs  
16 and without prejudice. In such an event, no party shall be bound by the requirements of this  
17 Decree.

18 STATE OF WASHINGTON  
19 DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON  
Attorney General

20  
21 \_\_\_\_\_  
James J. Pendowski  
Program Manager  
Toxics Cleanup Program  
360-407-7177

21 \_\_\_\_\_  
Andrew A. Fitz, WSBA #22169  
Senior Counsel  
360-586-6752

22 Date: \_\_\_\_\_

23 Date: \_\_\_\_\_



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BNSF RAILWAY COMPANY

MARATHON OIL COMPANY

*Katie Farmer*

Katie Farmer  
Executive Vice President, Operations  
817-352-1215

Dan Kalisek  
HES Director  
713-629-6600

Date: 3/8/2019

Date: \_\_\_\_\_

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

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JUDGE  
Spokane County Superior Court

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BNSF RAILWAY COMPANY

MARATHON OIL COMPANY

\_\_\_\_\_  
John Lovenburg  
Vice President, Environmental  
817-352-1459

Dan Kalisek  
\_\_\_\_\_  
Dan Kalisek  
HES Director  
713-629-6600



Date: \_\_\_\_\_

Date: 4 March 2019

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_ 2019.

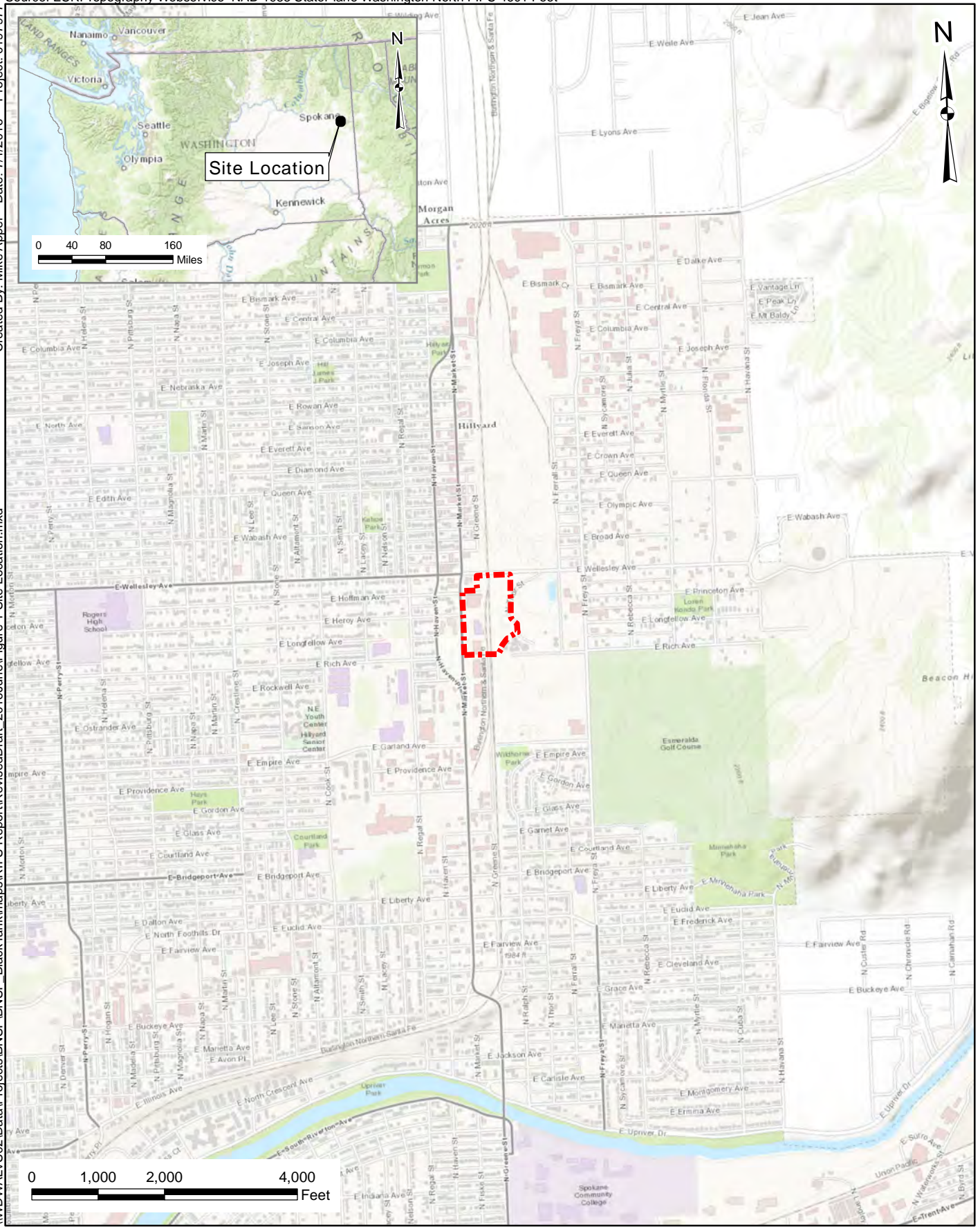
\_\_\_\_\_  
JUDGE  
Spokane County Superior Court

# Exhibit A

## Site Diagram


Created By: Mike Appel Date: 7/1/2016 Project: 0197977

\\WDWALY02\Data\Projects\BNSF\BNSF\_BlackTank\maps\BNSF\_Report\RevisedDraft\_2016\June\Figure 1 Site Location.mxd



**Legend**

 Approximate BNSF Black Tank Property Site Boundary  
 May be adjusted based on extent of downgradient dissolved-phase groundwater contamination

 Environmental Resources Management  
 www.erm.com

**Exhibit A**  
*Site Diagram*  
**BNSF Black Tank**  
**Spokane, Washington**