

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action at:

**BNSF Railway Black Tank Property  
Spokane County, WA**

AMENDMENT NO. 1 TO  
AGREED ORDER

No. 9188

TO: **BNSF Railway Company  
Marathon Oil Company**

**The signatories to this Agreed Order are collectively referred to herein as the Potentially Liable Persons (“PLPs”).**

**I. AMENDMENT**

Agreed Order (Order) No. 9188 dated August 23, 2012, is hereby amended to incorporate the information and requirements contained in this Amendment. This Amendment is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050 (1) and except as indicated below does not replace or change any of the exiting requirements of the Order, which shall remain in effect.

**V. FINDINGS OF FACT**

Section V (Findings of Fact) is amended by adding the following:

I. On August 23, 2012, Agreed Order 9188 was executed between Ecology and PLPs that required PLPs to complete a Remedial Investigation and Feasibility Study (RI/FS) at the Site. The PLPs submitted the final draft of the RI/FS report to Ecology in March 2017. The report was made available for public review and comment and was determined to be final after Ecology’s response to public comments. Ecology sent a letter to the PLPs dated May 19, 2017 informing them of the RI/FS final status.

J. The March 2017 RI/FS identified contamination at the Site in shallow soil (<15 feet), intermediate soil (between 15 feet and approximately 150 feet below ground surface [bgs]), deep smear zone soil (between approximately 150 and 180 feet bgs), and in Site groundwater.

## **VI. ECOLOGY DETERMINATIONS**

Section VI (Ecology Determinations) is amended by adding the following:

F. Under WAC 173-340-430, an interim action is a remedial action: 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 the remedial investigation/feasibility study or design of the cleanup action.

G. Ecology has determined that additional work in the form of an interim action is necessary in order to begin implementation of a cleanup action for shallow contaminated soil so as to improve environmental conditions at the Site. Such a circumstance is consistent with WAC 173-340-430.

H. The work required by this amendment is consistent with the final cleanup action Ecology expects to propose for the Site and will not foreclose reasonable alternatives for that action. The parties expect to negotiate a consent decree that will provide for implementing that final cleanup action. If the work required by this amendment is still in progress at the time a prospective future decree is entered, Ecology intends to incorporate that work into the scope of that decree.

## **VII. WORK TO BE PERFORMED**

Section VII (Work to be Performed) is amended by adding the following actions:

F. The PLPs shall furnish all personnel, materials, and services necessary for, or incidental to, the planning, initiation, completion, and reporting upon the Scope of Work and Schedule, attached as Exhibit B-A1. Exhibit B-A1 is incorporated by reference and is an integral and enforceable part of the Order. The work to be performed is to conduct an interim action. The PLPs shall commence work and thereafter complete all tasks in Exhibit B-A1 in the time frames and frame work indicated unless the Department grants an extension in accordance with Section

VIII.K, or unless provided otherwise in the Order. Each element of Exhibit B-A1 shall be implemented and completed in accordance with the Model Toxics Control Action (Chapter 70.105.D RCW) and its implementing regulation (Chapter 173-340 WAC) as amended, and all applicable federal, state, and local laws and regulations.

### **VIII. TERMS AND CONDITIONS OF ORDER**

Section VIII (Terms and Conditions of Order) is amended by replacing the applicable language or adding to the language of the identified sub-sections as follows:

**A. Public Notice** (replace in whole)

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order and its Amendment(s) be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order or its Amendment(s) should public comment disclose facts or considerations which indicate to Ecology that this Order or its Amendment(s) is inadequate or improper in any respect.

**D. Designated Project Coordinators** (replace in whole)

The project coordinator for Ecology is:

Jeremy Schmidt, P.E.  
4601 N Monroe  
Spokane, WA 99205  
Phone: 509-329-3484  
E-mail: jesc461@ecy.wa.gov

The project coordinators for the PLPs are:

For BNSF:  
Shane DeGross  
BNSF Railway Company  
605 Puyallup Avenue  
Tacoma, WA 98134  
Phone: 253-591-2567  
E-mail: Shane.DeGross@BNSF.com

For Marathon:  
Renée Bellavance  
Senior Environmental Advisor, Corporate Responsibility  
Husky Oil Operations Limited  
707 8<sup>th</sup> Ave. S.W., Calgary, AB  
Box 6525, Stn. D, T2P 3G7

Phone: 403-298-6278 Cell: 587-226-6561  
E-mail: Renee.Bellavance@huskyenergy.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 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.

**Effective date of this Amendment:** \_\_\_\_\_

**BNSF RAILWAY COMPANY**

**MARATHON OIL COMPANY**

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Vice President, Environmental  
BNSF Railway Company  
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Telephone: 817-352-1459

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HES Director  
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