



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

May 6, 2008

Mr. Dave Clark
Director, Environmental Remediation
BNSF Railway Company
920 SE Quincy Street
Topeka, KS 66612-1116

Dear Mr. Clark:

RE: BNSF Former Fueling and Maintenance Facility, Skykomish, Washington;
Access Agreements Required for Skykomish Hotel by
Consent Decree No. 07-2-33672-9

I am writing to discuss an issue related to BNSF's implementation of cleanup at the BNSF Skykomish Site in Washington State, under Consent Decree No. 07-2-33672-9. As you may be aware, the Decree requires BNSF to clean up local government and private property impacted by historic railyard operations in Skykomish. In order to implement the cleanup, BNSF must obtain access agreements with the Town of Skykomish and private property owners. BNSF is obtaining the necessary access agreements for work in 2008, but has not yet obtained an access agreement critical to support technical planning for cleanup work on the Skykomish Hotel in 2009. The Department of Ecology (Ecology) is concerned that a lack of follow through by BNSF on assurances made to the owners of the Skykomish Hotel has stalled negotiations for this key access agreement. Pursuant to our regulatory oversight role, Ecology is engaging you directly to facilitate access so that the cleanup can proceed expeditiously.

BNSF and the owners of the Skykomish Hotel began engaging on access issues in 2007. When access and cleanup issues were not resolved by the fall of 2007, the cleanup work for this particular property was rescheduled to a later phase of the multi-year cleanup to allow further time for negotiation. Given the sequencing of cleanup, however, no additional delays in obtaining this access agreement are possible. Recently, the owners of the Hotel engaged Ecology on several issues related to cleanup efforts and how these activities will impact the Hotel. They informed Ecology they have continued to incur legal expenses as part of their access negotiations with BNSF, and that these have not been reimbursed. BNSF has reimbursed legal fees for other property owners who have engaged in access negotiations, and have reportedly given the Hotel owners repeated verbal assurances that it will pay their legal fees for access negotiations, yet no such action has ever been taken. The Hotel owners have expressed to Ecology that the issue of their legal fees related to negotiations with BNSF is extremely important to them, and that they are no longer able to continue access negotiations without appropriate



compensation for their expenses. They have also expressed concern that other needs are not being addressed in access negotiations, namely that BNSF is not making accommodations to ensure minimal disruption to Hotel activities during the cleanup.

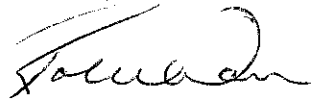
Ecology has repeatedly discussed these matters with Bruce Sheppard. With regard to legal fees Mr. Sheppard has stated that BNSF will pay them. Ecology has also undertaken efforts to set up and pay for mediation services to assist both parties in reaching an access agreement. Despite these efforts, legal fees have not been paid to our knowledge as of the date of this letter, and negotiations remain stalled as a result.

The Skykomish Hotel is of particular importance to the Town of Skykomish. It is one of the larger buildings in town that is underlain by petroleum free product from historic railroad operations, and is upgradient from numerous properties that have already been cleaned up or are scheduled for cleanup. Ecology also understands that it is critical BNSF be able to negotiate a satisfactory access agreement and settlement with the owners of the Hotel for any cleanup work to go forward. The cleanup of the Skykomish Hotel is itself critical to the success of the overall cleanup of the town.

For these reasons, Ecology is requesting that BNSF follow through with verbal assurances made by Bruce Sheppard to pay the reasonable legal fees incurred by the Skykomish Hotel owners related to these access negotiations. Please advise us in writing of how you intend to resolve access issues with the Hotel owners in the most expedient way possible, so that BNSF can proceed with an expeditious cleanup of this community.

If you have any questions, please call me at (425) 649-7054.

Sincerely,



Robert W. Warren, P.Hg., MBA
Section Manager, Northwest Regional Office
Toxics Cleanup Program

cc: Louise Bardy, Brian Sato, Brad Petrovich, Jim Pendowski, Ecology
Kristie Carevich, Assistant Attorney General
Bruce Sheppard, BNSF
Paul R. Hoferer, BNSF
Craig Trueblood, K&L Gates
Representative Dan Christianson, House of Representatives
Howard Jensen, Hillis, Clark, Martin and Peterson, P S
Carl Dieter Benz, Skykomish Hotel