

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

BNSF RAILWAY COMPANY,

Respondent.

DOCKET TR-150284

STIPULATION

1 Staff of the Washington Utilities and Transportation Commission (Staff) and BNSF  
Railway Company (BNSF or the Company), through their authorized representatives,  
respectfully submit the following stipulation in response to Order 02, paragraph 48, which  
poses the questions repeated below.

2 **Commission Question 1:** “What constitutes an ‘event connected to the operation of  
the railroad company that results in the . . . [r]elease of any hazard material’ that BNSF  
Railway Company will report pursuant to WAC 480-62-310, including but not necessarily  
limited to the extent to which BNSF Railway Company will report leaks or spills on the  
property of a shipper or a third party and the other types of events involved in the violations  
alleged in the complaint.”

3 **Joint Response to Question 1:** The parties respectfully submit that the phrase  
“event connected to the operation of the railroad company that results in the . . . [r]elease of  
any hazard material” is not subject to official clarification absent a Commission-sanctioned  
rulemaking<sup>1</sup> or a Commission-issued interpretive or policy statement<sup>2</sup> or declaratory order.<sup>3</sup>

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<sup>1</sup> RCW 34.05.310 through .395.

<sup>2</sup> RCW 34.05.230.

4           The parties note for purposes of settlement, however, that WAC 480-62-310 does not include specific language regarding the “property of a shipper or a third party.” The fact that a railroad company learns about a hazardous material release on the property of a shipper or a third party does not, by itself, make the event reportable by a railroad company under WAC 480-62-310. That fact also does not necessarily absolve the railroad of its duty to report events that are otherwise reportable under WAC 480-62-310. Applicability of WAC 480-62-310 would depend on the circumstances of the incident in question, including where the purported incident occurred, who had possession and control of the rail cars at issue, who discovered the incident, the timing of discovery, and the railroad company’s access to information about the incident at issue. The Commission bears the burden of proof of a cause of action under WAC 480-62-310. For leaks or spills that occur on the property of a shipper or a third party, the railroad company may argue that the Commission failed to carry its burden to prove that the hazardous material release was “connected to the operation of the railroad company.” WAC 480-62-310(1).

5           **Commission Question 2:** “What constitutes a ‘hazardous material’ the release of which BNSF Railway Company will report pursuant to WAC 480-62-310, with examples of materials that the Commission should (or should not) consider to be ‘hazardous’ within the meaning of the rule, including but not necessarily limited to the materials involved in the violations alleged in the complaint.”

6           **Joint Response to Question 2:** The parties again respectfully submit that the phrase “hazardous material” is not subject to official clarification in this docket.

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<sup>3</sup> RCW 34.05.240.

7           The parties stipulate for purposes of settlement, however, that “hazardous material” as used in WAC 480-62-310 is defined with reference to federal law; namely, 49 CFR Part 171.8, which provides:

*Hazardous material* means a substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in part 173 of this subchapter.

This definition of “hazardous material” is incorporated by reference into the Commission’s regulations at WAC 480-62-999.

8           **Commission Question 3:** “[Describe] the best practices for compliance with WAC 480-62-310 that BNSF Railway Company will implement and the strategies for more effective communication BNSF Railway Company and Commission Staff will use on a going-forward basis, including but not limited to the desirability and feasibility of BNSF Railway Company reporting the events identified in WAC 480-62-310 to both the Washington state emergency operations center and Commission Staff.”

9           **Joint Response to Question 3:** The parties share a common goal of maximum achievable compliance with WAC 480-62-310, where applicable. To that end, BNSF reviewed its environmental compliance program relating to reporting of releases of hazardous material and identified two areas for adjustment with respect to its reporting under WAC 480-62-310: the reporting of releases of hazardous materials in quantities less than those triggering reporting under other state and federal environmental statutes, rules and/or regulations; and the process for reporting releases within the 30-minute time frame set forth in WAC 480-62-310. BNSF has adjusted its policy and practice of reporting to

address those areas, and based on feedback from Staff, understands that reporting is currently in compliance. In particular, BNSF has created an app (software application) for its personnel that includes the Washington State reporting requirements for reference. In addition, to facilitate constructive communications with Staff, BNSF has identified for Staff a primary point of contact for hazardous material related questions and concerns in Washington State:

Justin Piper, CHMM  
Director, Hazardous Materials  
BNSF Railway  
1515 W. 39th Street  
BLDG G  
Vancouver, WA 98660  
Office: 360-418-6268  
Cell: 360-553-8672  
[Justin.Piper@bnsf.com](mailto:Justin.Piper@bnsf.com)

In addition, BNSF has informed Staff that it may use the BNSF HAZMAT distribution email, [BNSFHAZMATTEAM@BNSF.COM](mailto:BNSFHAZMATTEAM@BNSF.COM), to facilitate communications and/or action in the event Mr. Piper cannot be reached or is not available.

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Staff has discussed these policies and procedures with BNSF and finds them satisfactory. For its part, Staff pledges to use effective, thorough techniques when investigating potential violations. Staff's due diligence may include solicitation of data from the company prior to the initiation of any formal enforcement action. Staff seeks to maintain a collaborative relationship with BNSF. To this end, Staff will continue to provide technical assistance as appropriate. Finally, as mandated by the Commission in Order 02, Staff will work with the emergency operations center to establish "the expectations, procedures, and

responsibilities of each agency arising from the reporting that WAC 480-62-310 requires.”<sup>4</sup>

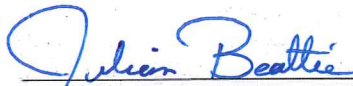
Staff will detail the results of that discussion in a separate filing.

11 The parties agree that BNSF should not submit reports simultaneously to the emergency operations center and to Staff. There is no basis under WAC 480-62-310 to require the additional report to Staff.

DATED February 1, 2016.

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

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<sup>4</sup> Order 02, ¶ 49.