BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF BNSF RAILWAY COMPANY, Respondent.	)))))	MUTUAL AGREEMENT AND FINAL ORDER CASE NO. AQ-GHG-HQ-2025-685

WHEREAS:

1. Respondent operates an interstate freight railway business that includes operations in Oregon.

2. As part of its operations, for at least the last 20 years, Respondent has imported more than 5,500 gallons of diesel fuel per year into Oregon for use in its railroad locomotives.

3. The Oregon Greenhouse Gas Reporting Program, OAR 340, Division 215, requires fuel suppliers and in-state producers to register and report their greenhouse gas emissions to DEQ. Specifically, among other categories of fuel suppliers and in-state producers, greenhouse gas registration and reporting requirements apply to importers of more than 5,500 gallons per year of distillate fuel. OAR 340-215-0030(3)(a)(C). Diesel is a distillate fuel. Greenhouse gas reporting has been required since the 2010 data year, with reports due April 30 for the previous data year. OAR 340-215-0046(1)(c).

4. Third-party verification requirements for greenhouse gas emissions data reports apply when emissions exceed 25,000 metric tons of carbon dioxide equivalent (CO_2e). OAR 340-272-0120(1)(a)(A). Fuel suppliers that are related entities, as defined in OAR 340-215-0020(57), must aggregate their emissions for purposes of this third party verification requirement. OAR 340-272-0120(1)(b)(A). Respondent and Pilot Travel Centers LLC are related entities, as defined in OAR 340-215-0020(57), and together their greenhouse gas emissions exceeded 25,000 $mtCO_2e$ in 2021 through 2024. Thus, Respondent was required to complete third party verification under OAR Chapter 340, Division 272 for its 2021 through 2024 greenhouse gas emissions data reports.

5. The Oregon Clean Fuels Program, OAR Chapter 340, Division 253, is a market-based program that requires importers of transportation fuels to reduce the carbon intensity of those fuels over time, to help achieve the state's greenhouse gas reduction goals. Diesel is among the regulated fuels in the Clean Fuels Program. OAR 340-253-0040(125); OAR 340-253-0200(2) and (3).

6. According to OAR 340-253-0100, all entities that import any regulated fuel into Oregon are regulated parties under the Clean Fuels Program. Regulated parties must register in the Clean Fuels Program on or before the date that they begin importing fuel into Oregon.

7. Under ORS 468A.277(2) and OAR 340-253-0250, transportation fuel demonstrated to be used in locomotives is exempt from regulation under the Clean Fuels Program. However, under OAR 340-253-0630, exempt fuels must still be reported on a quarterly basis in the Oregon Fuels Reporting System (OFRS). To claim a fuel as exempt, the regulated party must keep documentation that the fuel was supplied for use in an exempt category as outlined in OAR 340-253-0250.

8. According to OAR 340-253-1010(2), fuels cannot be claimed as exempt once the regular reporting period for that quarter has closed; for exempt fuels reported after the close of the quarter, DEQ will deem the fuels to be voluntarily included as non-exempt fuels, which would generate deficits in the OFRS.

9. On April 4, 2025, Respondent notified DEQ that it had not registered with the Oregon Greenhouse Gas Reporting program, nor had it reported any greenhouse gas emissions information to DEQ. That notification led to the discovery that Respondent has also not registered as a regulated party under the Oregon Clean Fuels Program and has not been reporting its fuel imports to DEQ under that program.

10. On June 10, 2025, Respondent registered with the Oregon Greenhouse Gas Reporting Program. In July 2025, Respondent submitted greenhouse gas emissions data reports to DEQ for data years 2010 through 2024—the years for which records existed to support

reporting. In October 2025, Respondent completed third party verification for the 2021 through 2024 emissions data reports.

11. Respondent is unique among regulated parties in the Clean Fuels Program because the only transportation fuel that it imports into Oregon and is required to report—diesel for its locomotives—is an exempt fuel. Most other regulated parties that claim transportation fuels as exempt under ORS 468A.277(2) and OAR 340-253-0250 report both exempt and non-exempt fuels.

I. AGREEMENT

Respondent and DEQ hereby agree that:

1. This Mutual Agreement and Final Order (MAO) shall be effective upon the date fully executed (MAO Effective Date).

2. Respondent violated OAR 340-215-0030(3) and OAR 340-215-0046(1)(c) by failing to timely submit annual greenhouse gas emissions data reports to DEQ from 2010 through 2024. These are Class I violations according to OAR 340-012-0054(1)(ii). DEQ hereby assesses a $7,200 civil penalty for these violations. The determination of the civil penalty is attached and incorporated as Exhibit 1.

3. Respondent violated OAR 340-272-0300(2) by failing to complete third party verification of its greenhouse gas emissions data for 2021 through 2024. Specifically, Respondent's greenhouse gas emissions are subject to third party verification because, together with the emissions of Pilot Travel Centers LLC, a related entity as defined in OAR 340-215-0020(57), the emissions exceed 25,000 mtCO2e during those years. 340-272-0120(1)(a)(A); OAR 340-272-0120(1)(b)(A). These are Class I violations according to OAR 340-012-0054(1)(kk). DEQ hereby assesses a $9,366 civil penalty for these violations. The determination of the civil penalty is attached and incorporated as Exhibit 2.

4. Respondent violated OAR 340-253-0100(1) and (4) by failing to register as a regulated party in the Oregon Clean Fuels Program on or before the date when Respondent began importing fuel into Oregon. Because Respondent has been importing diesel into Oregon

for at least 20 years, Respondent would have been subject to the first quarter of reporting under the Clean Fuels Program in 2016. This is a Class I violation according to OAR 340-012-0054(1)(ddd). DEQ hereby assesses a $7,200 civil penalty for this violation. The determination of the civil penalty is attached and incorporated as Exhibit 3.

5. Respondent violated OAR 340-253-0630 by failing to submit quarterly Clean Fuels Reports to DEQ from 2016 through the second quarter of 2025. These are Class II violations, according to OAR 340-012-0054(2)(u). DEQ hereby assesses a $5,200 civil penalty for these violations. The determination of the civil penalty is attached and incorporated as Exhibit 4.

6. The total civil penalty for the violations described in Section 1, Paragraphs 2-5 is $28,966.

7. DEQ and Respondent recognize that the Environmental Quality Commission (EQC) has the authority to impose civil penalties and to issue an order to enforce compliance or restrain further violations of the Clean Fuels Program rules. Therefore, pursuant to ORS 183.417(3), DEQ and Respondent wish to settle violations referred to in Section I, Paragraphs 2-5 of this MAO.

8. Pursuant to OAR 340-012-0030(19) and OAR 340-012-0145(2), the violations described in Section I, Paragraphs 2-5 will be treated as prior significant actions in the event a future violation occurs.

9. DEQ recognizes the unique circumstances of Respondent as an interstate railroad and the unique nature of Respondent as a regulated party within the Clean Fuels Program, as described in Section I, Paragraph 11, above. Based on these factors, DEQ agrees that if Respondent registers and submits its quarterly reports and other information as described in Section II, Paragraph 3, below, and those reports and information confirm that the fuel imported by Respondent was not used for any non-exempt purposes, DEQ will not enforce the requirement in OAR 340-253-1010(2) that exempt fuels must be claimed by the end of the calendar quarter and no deficits will be generated in the OFRS for exempt gallons.

10. Respondent waives any and all rights and objections Respondent may have to a contested case hearing and judicial review of this MAO, and to service of a copy of this MAO.

11. This MAO resolves all civil claims of DEQ, based upon the facts alleged, for the violations expressly alleged in this MAO. This MAO is not intended to limit, in any way, DEQ's right to proceed against Respondent in any forum for any past or future violations not expressly settled herein.

12. Respondent releases and waives any and all claims of any kind, known or unknown, past or future, against the State of Oregon or its agencies, instrumentalities, employees, officers, or agents, arising out of the matters and events set out in this MAO. Any and all claims includes but is not limited to any claim under 42 USC § 1983 et seq., any claim under federal or state law for damages, declaratory, or equitable relief, and any claim for attorney's fees or costs.

13. This MAO shall be binding on Respondent and its respective successors, agents, and assigns. The undersigned representative of Respondent certifies that they are fully authorized to execute and bind Respondent to this MAO. No change in ownership, corporate or partnership status of Respondent, or change in the ownership of the properties or businesses affected by this MAO shall in any way alter Respondent's obligation under this MAO, unless otherwise approved in writing by DEQ through an amendment to this MAO.

14. Verifiable electronic, facsimile, or scanned signatures on this MAO shall be treated the same as original signatures.

15. Respondent is subject to the following stipulated penalties: For each day of violation of the requirements in Section II, Paragraphs 2 and 3, upon receipt of a written Penalty Demand Notice from DEQ, Respondent shall pay a civil penalty of $2,400.

16. Within twenty (20) days of receipt of a Penalty Demand Notice from DEQ, Respondent may contest the Penalty Demand Notice. Respondent agrees that the issue shall be limited to Respondent's compliance or noncompliance with this MAO. The amount of the stipulated civil penalty is established in advance by this MAO and is not a contestable issue.

17. This MAO terminates after Respondent has complied with all the requirements of Section II below. However, Respondent remains liable for stipulated penalties for any violations of the MAO occurring during the period the MAO was in effect.

18. If any event occurs that is beyond Respondent's reasonable control that may cause a delay or deviation in Respondent satisfactorily completing the requirements contained in this MAO despite Respondent's reasonable efforts ("Force Majeure"), Respondent will promptly, upon learning of the event, notify DEQ verbally of the cause of the delay or deviation, its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation and the timetable by which Respondent proposes to carry out such measures. Respondent will confirm in writing this information within five working days of the verbal notification. Failure to comply with these notice requirements precludes Respondent from asserting Force Majeure for the event and for any additional delay it causes. If Respondent demonstrates to DEQ's reasonable satisfaction that the delay or deviation has been or will be caused by a Force Majeure, DEQ will extend the times for performance of the affected requirements in Section II, as appropriate, and such delays or deviations caused by a Force Majeure shall not constitute a violation of this MAO. Circumstances or events constituting a Force Majeure include, but are not limited to, acts of nature, unforeseen strikes or work stoppages, site conditions that could not have been reasonably anticipated, fire, explosion, riot, sabotage, war, unforeseen supply chain issues, and delays in receiving a governmental approval or permit outside of Respondent's control. Normal inclement weather, a consultant's failure to provide timely reports, increased cost of performance and changed business or economic circumstances may not be considered Force Majeure.

19. Civil penalty payments pursuant to this MAO may be made as follows:

a. Pay online with e-check (ACH) or credit card. Go to Your DEQ Online here: https://ydo.oregon.gov. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Reference Number and FIMS Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges, or

b. Pay by check or money order: Make check payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order and note the case number on your check.

II. FINAL ORDER

The Environmental Quality Commission hereby enters a final order:

1. Imposing upon Respondent a total civil penalty of $28,966 for the violations alleged in Section I, Paragraphs 2-5 of this MAO, $28,966 of which is due within 14 days of the MAO Effective Date.

2. By December 17, 2025, Respondent must register as a regulated party in the Oregon Clean Fuels Program within the OFRS.

3. By January 12, 2026, Respondent must submit quarterly reports for Q1 2025 through Q3 2025 in the OFRS. The reports must include all data required under OAR 340-253-0250. For all transportation fuel that Respondent claims as exempt, Respondent must meet the requirements of OAR 340-253-0250(2)(b) and demonstrate that the fuel was imported into Oregon solely for locomotive use and that it was not used in any other vehicles or equipment.

BNSF RAILWAY COMPANY (RESPONDENT)

12/17/2025
Date

Signature
Casey Gourley
Name (print)
General Director, Strategic Sourcing
Title (print)

DEPARTMENT OF ENVIRONMENTAL QUALITY and
ENVIRONMENTAL QUALITY COMMISSION

1/6/2026
Date

E. Saylor
Erin Saylor, Interim Manager
Office of Compliance and Enforcement
on behalf of DEQ pursuant to OAR 340-012-0170
on behalf of the EQC pursuant to OAR 340-011-0505