



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000
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February 21, 2013

Petur Sim
BP West Coast Products, LLC
4519 Grandview Road
Blaine, Washington 98230

RE: Water Quality Certification Order #9702 for U.S. Army Corps of Engineers Public Notice #NWS-2012-827, Rail Logistics Project, Wetlands, Whatcom County, Washington

Dear Mr. Sim:

On August 23, 2012, BP West Coast Products, LLC submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification under the federal Clean Water Act for the proposed Rail Logistics Project.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Susan Meyer at 425-649-7168. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Erik Stockdale
Northwest Regional Office
Shorelands and Environmental Assistance Program

ES:sdm:cja

Enclosure

By certified mail: 7012 1640 0000 6245 9900

cc: Randel Perry, U.S. Army Corps of Engineers
Dave Every, URS
Ed Miller, Miller Environmental Services, LLC
e-cc: Susan Meyer, Ecology
Raman Iyer, Ecology
Loree' Randall, Ecology
ecyrefedpermits@ecy.wa.gov



IN THE MATTER OF GRANTING A) ORDER # 9702
WATER QUALITY) Corps Reference #NWS-2012-827
CERTIFICATION TO) Rail Logistics Project; Wetlands, Whatcom
BP West Coast Products, LLC) County, Washington.
in accordance with 33 U.S.C. 1341)
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: Petur Sim
BP West Coast Products, LLC
4519 Grandview Road
Blaine, Washington 98230

On August 23, 2012, BP West Coast Products, LLC submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on September 24, 2012.

The project involves construction of a 10,200-foot railroad loop, a cargo transfer facility, storage area, operations shelter, a parking lot and other attendant features. In order to construct the project, 16.86 acres of Category III wetlands will be permanently filled, and 0.51 acres of Category III wetlands will be temporarily filled.

Mitigation for the permanent filling of wetlands will occur in two advance mitigation areas just north of the project site that were approved as part of the mitigation for two other projects: the Maintenance Services Center/Cogeneration Facility (Order #5976) and the Brown Road Materials Storage Area (Order #1628). Mitigation at the two sites involves 4.6 acres of wetland creation, 31.3 acres of wetland rehabilitation, and 12.82 acres of upland buffer enhancement. All temporary impacts to wetlands and buffers will be restored immediately after construction.

The project is located at 4519 Grandview Road, Whatcom County, Washington, in wetlands, Section 8, T. 39N, R.1E, WRIA 1.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§ 1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 302, 303, 306 and 307);

2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. § 1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. § 1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

- A1. For purposes of this Order, the term "Applicant" shall mean BP West Coast Products, LLC and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: Susan Meyer, Wetland Specialist, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference **Order #9702** and **Corps Reference #NWS-2012-827**.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on August 23, 2012 and the Addendum for Rail Logistics Project, dated February 4, 2013. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA and addendum is voided by subsequent changes to the project not authorized by this Order.

- A4. Within 30 days of receipt of an updated JARPA, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
- A5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual Section 404 permit.
- A6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
- A7. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
- A8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
- A9. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project site.
- A10. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
- A11. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

B. Wetland Compensatory Mitigation Conditions:

- B1. The Applicant shall mitigate wetland impacts as described in the Wetland Delineation and Critical Areas Assessment Report (hereafter called the "Advance Mitigation Proposal"), prepared by URS and Miller Environmental Services, LLC, and dated August 21, 2012, or as modified by this Order or revised and approved by Ecology.
- B2. The Applicant shall submit any changes to the Advance Mitigation Proposal in writing to Ecology (see A2) for review and approval before work on the Rail Logistics Project begins.

Monitoring and Maintenance

- B3. The Applicant shall water and maintain all mitigation plantings so as to meet the Mitigation Plans' performance standards as outlined in the following two documents:
- Final Mitigation Plan, Brown Road Materials Storage Area, September 20, 2004, prepared by URS (Order #1628)
 - Revised Final BP Cherry Point Cogeneration/Facilities Projects Compensatory Mitigation Plan, September 2008, prepared by URS (Order #5976).
- B4. The Applicant shall monitor the mitigation sites and submit monitoring plans according to the relevant plans referenced in B3.
- B5. The Applicant shall submit to Ecology (see A2) monitoring reports documenting mitigation site conditions for the remainder of the monitoring periods for the two sites or until Ecology agrees that final performance standards are met. The monitoring reports must:
- a) Be submitted by December 31 of each monitoring year. Include one hard copy and one electronic file.
 - b) Include the information listed in Attachment B (Information Required for Monitoring Reports).
- B6. The Applicant shall implement the Mitigation Plan's contingency measures if the Mitigation Plans' goals, objectives, or performance standards are not being met.
- B7. Prior to implementing contingency measures not specified in the Mitigation Plans, the Applicant shall consult with and obtain written approval from Ecology for the changes.
- B8. When necessary to meet the performance standards, the Applicant shall replace dead or dying plants with the same species, or an appropriate native plant alternative, during the first available planting season and note species, numbers, and approximate locations of all replacement plants in the subsequent monitoring report.

- B9. For monitoring years five (5) and ten (10) the Applicant shall use the currently approved federal wetland delineation manual and appropriate regional supplement to delineate all compensatory wetlands and include delineation information (e.g. data sheets, maps, etc.) in the monitoring reports.
- B10. At the end of the monitoring period, the Applicant shall use the August 2004 or updated version of "Washington State Wetlands Rating System for Western Washington" to rate all wetlands and include the information in the monitoring report.
- B11. If the Applicant has not met all conditions and performance standards for the mitigation site at the end of the monitoring period, Ecology may require additional monitoring, additional mitigation, or both.

C. Conditions for Construction Activities:

General Conditions:

- C1. Applicant shall obtain and comply with a Construction Stormwater General Permit for this project.
- C2. Construction stormwater, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
- C3. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- C4. All construction debris shall be properly disposed of in a manner to prevent it from entering the wetlands and/or wetland buffers.
- C5. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
- C6. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- C7. Applicant shall ensure that fill (soil) placed for the proposed project does not contain toxic materials in toxic amounts.

D. Emergency/Contingency Measures:

- D1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- D2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
- D3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
- D4. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:
- a. Cease operations at the location of the violation or spill.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, and within 24 hours of spills or other events to Ecology's 401/CZM Federal Project at 425-649-7168 or 425-649-7000.
 - d. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

E. Timing Requirements

- E1. This Order is valid until all compliance requirements in this document have been met.

F. Reporting and Notification Requirement Conditions

F1. The Applicant shall provide to Ecology's 401/CZM Federal Permit Manager a copy of the final Corps permit within 2 weeks of receipt of the permit. A copy shall be submitted per condition A2 above.

F2. Applicant shall provide notice to Ecology's Susan Meyer:

- At least three (3) days prior to the start of construction.
- Within 14 days after completion of construction at the project site.
- At least seven (7) days within the start of impacts to wetlands.

Notification, referencing Corps Reference #NWS-2012-827, Order #9702 can take place by telephone to 425-649-7168 or 425-649-7000, fax to 425-649-7098, email to susan.meyer@ecy.wa.gov, or in writing.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of the following within 30 days of the date of receipt of this Order:

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW STE 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Order to:

Susan Meyer
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008
425-649-7168
susan.meyer@ecy.wa.gov

MORE INFORMATION

Pollution Control Hearings Board Website

www.ecy.wa.gov/Boards_PCHB.aspx

Chapter 43.21B RCW - Environmental and Land Use Hearings Office -- Pollution Control Hearings Board

<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>

Chapter 371-08 WAC - Practice And Procedure

<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>

Chapter 34.05 RCW - Administrative Procedure Act

<http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05>

Chapter 90.48 RCW - Water Pollution Control

<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>

Chapter 173.204 WAC - Sediment Management Standards

www.ecy.wa.gov/biblio/wac173204.html

Chapter 173-200 WAC - Water Quality Standards for Ground Waters of the State of Washington

www.ecy.wa.gov/biblio/wac173200.html

Chapter 173-201A WAC - Water Quality Standards for Surface Waters of the State of Washington

www.ecy.wa.gov/biblio/wac173201A.html

SIGNATURE



Erik Stockdale, Unit Supervisor
Wetlands/401 Unit
Shorelands and Environmental Assistance Program
Northwest Regional Office

2-21-2013

February 21, 2013

ATTACHMENT A

**BP WEST COAST PRODUCTS, LLC
RAIL LOGISTICS PROJECT
Water Quality Certification Order#9702**

**Statement of Understanding of
Water Quality Certification Conditions**

I have read and understand the conditions of Order #9702 Section 401 Water Quality Certification for the BP West Coast Products, LLC Rail Logistics Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

Signature

Date

Title

Company

Attachment B
Required Information for Monitoring Reports
(See Condition B5)
BP WEST COAST PRODUCTS, LLC
RAIL LOGISTICS PROJECT
Water Quality Certification Order#9702

Corps Reference #NWS-2012-827

Ecology requires the following information, for monitoring reports submitted under this Order. Ecology will accept additional information that may be required by other regulators.

Background Information

- 1) Project name
- 2) Ecology docket number and Corps reference number
- 3) Name and contact information of the parties responsible for the mitigation site including:
 - a) The applicant
 - b) The landowner
- 4) Name and contact information for the party responsible for the monitoring activities and report
- 5) Who the report was prepared for (name, address, and phone number) *{if different from number 3 above.}*
- 6) Month and year the monitoring data were collected
- 7) Month and year the report was produced

Mitigation Project Information

- 8) Brief description of the mitigation project including:
 - a) Directions to the site
 - b) Acreage and type(s) (re-establishment, rehabilitation, creation, enhancement, and preservation) of mitigation authorized to compensate for wetland impacts
- 9) Brief description of monitoring approach and methods.
- 10) A list of the goals and objectives for the mitigation project
- 11) Summary table of monitoring data compared with performance standards. Using the monitoring data, describe how the site is developing toward goals and objectives and whether the project is in compliance with performance standards
- 12) Summary (including dates) of management actions (maintenance, contingencies, and corrective actions) implemented at the site(s)
- 13) Summary of any difficulties or significant events that occurred on the site that may affect the ultimate success of the project

- 14) Specific recommendations for any additional corrective actions or adaptive management with a time table
- 15) Summary of any lessons learned
- 16) Site maps (8 1/2" x 11" or larger) of the compensatory mitigation site(s) including the following (at a minimum):
 - a) The month and year when the maps were produced and, if applicable, when information was collected
 - b) The geographic location of the site with landmarks.
 - c) Clear delineation of the project perimeter(s).
 - d) Species, numbers, and approximate locations of all replanted material vegetation.
 - e) Location of habitat features.
 - f) Location of permanent photo stations and location of any other photos.
 - g) Location of sampling points or transects.
- 17) Photographs taken at permanent photo stations (and other photographs as needed) from the most recent monitoring visit, which are dated and clearly indicate the direction from which the photo was taken. We recommend photo pans.