



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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March 18, 2015

Walter Smith
Burlington Northern Santa Fe Railway
2454 Occidental Avenue South, Suite 2D
Seattle, WA 98134

RE: Water Quality Certification Order #11277 for U.S. Army Corps of Engineers
Public Notice #NWS-2013-922, Seattle-to-Tacoma Sounder Commuter Rail
Easements and Improvements (Easement 4) Project, in Auburn, King County,
Washington

Dear Mr. Smith:

On February 23, 2015, BNSF Railway submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed Seattle-to-Tacoma Sounder Commuter Rail Easements and Improvements (Easement 4) 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 Rebekah Padgett at (425) 649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Paul Anderson, Unit Supervisor
Shorelands and Environmental Assistance Program
Northwest Regional Office

PA:rrp:mrw
Enclosure

By certified mail: 7013 2250 0000 1369 9543



cc: Ron Wilcox, U.S. Army Corps of Engineers
Gail Terzi, U.S. Army Corps of Engineers
Ellie Ziegler, Sound Transit
Larry Fisher, Washington Department of Fish and Wildlife
Jody Walters, NOAA Fisheries
Emily Teachout, U.S. Fish and Wildlife Service

e-cc: Patrick McGraner – NWRO
Loree' Randall – HQ
Raman Iyer – NWRO
Karen Walter, Muckleshoot Indian Tribe KWalter@muckleshoot.nsn.us
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A) ORDER #11277
WATER QUALITY) Corps Reference #NWS-2013-922
CERTIFICATION TO) Seattle-to-Tacoma Sounder Commuter Rail
Burlington Northern Santa Fe Railway) Easements and Improvements (Easement 4)
in accordance with 33 U.S.C. 1341) Project; Wetlands & Hill Creek Tributary North
(FWPCA § 401), RCW 90.48.120, RCW) and Hill Creek Tributary South, Auburn, King
90.48.260 and Chapter 173-201A WAC) County, Washington.

TO:

Walter Smith
Burlington Northern Santa Fe Railway
2454 Occidental Avenue South, Suite 2D
Seattle, WA 98134

On February 23, 2015, Burlington Northern Santa Fe Railway (BNSF Railway) submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on March 2, 2015.

Sound Transit proposes to purchase an easement from BNSF Railway to operate one additional round-trip commuter rail train in the Seattle-to-Tacoma rail corridor on an existing BNSF right-of-way. The following track improvements within a section of the BNSF corridor are included as part of Sound Transit's easement agreement with BNSF:

- Culverts:
 - Extend existing 60-inch-diameter corrugated metal pipe under the tracks by 23 feet to accommodate a new railroad embankment.
 - Remove an existing damaged culvert and replace with a new 51-foot-long, 48-inch-diameter culvert.
 - Extend an existing 36-inch-diameter culvert by 18 feet to accommodate a new railroad embankment.
- Construction will require land clearing, grading, excavation, and filling to widen the existing rail prism and expand the rail embankment slopes.
- Construct a new third main track.
- Construct a retaining wall along a section of new track.
- Move existing utility lines.
- Install signal improvements.

Mitigation for 2.82 acres of permanent wetland impacts and 186 square feet of aquatic impacts will be through purchase of credits from the King County Mitigation Reserves Program, an in-lieu fee (ILF) program. Mitigation for 3.06 acres of temporary wetland impacts will be through on-site re-seeding of disturbed wetland areas, as well as purchase of ILF credits for temporal impacts.

The project is located on the BNSF rail right-of-way from approximately 49th Street NW to approximately 5th Street N, Auburn, King County, Washington, in wetlands & Hill Creek Tributary North and Hill Creek Tributary South, Section 36, T. 22N, R. 4E, and Sections 01, 12, 13, 24, and 25, T. 21N, R. 4E, WRIA 9 and 10.

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 Burlington Northern Santa Fe Railway 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: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #11277 and Corps Reference #NWS-2013-922.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on February 23, 2015. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA 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. 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.
- A7. 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.
- A8. 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.
- A9. 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.
- A10. 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 or mitigation sites.

- A11. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state (including wetlands) or related aquatic resources, except as specifically provided for in conditions of this Order.
- A12. 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. Compensatory Mitigation Conditions:

- B1. The Applicant shall mitigate impacts as described in the *Seattle-to-Tacoma Sounder Commuter Rail Easement 4 Improvements In Lieu Fee Use Plan* (hereafter called the "ILF Use Plan"), prepared by ESA, dated March 17, 2015, or as revised and approved by Ecology. ILF credits shall be consistent with Table 8, Table 9, and Section B.4 of the ILF Use Plan.
- B2. The Applicant shall obtain a Statement of Sale from the Sponsor as proof of purchase of ILF credits for this impact project. A copy of the Statement of Sale must be submitted to Ecology (see A2) prior to impacting wetlands.

Documentation from the Sponsor shall include:

- Ecology's Order number,
 - Order issuance date,
 - Number of credits purchased,
 - Resource type of credits, and
 - Signatures from the Sponsor and the Applicant.
- B3. If the Applicant cannot complete the purchase of credits before impacts to wetlands occur, Ecology may require additional compensation to account for additional temporal loss.
- B4. The Applicant shall notify and submit in writing to Ecology (see A2) any proposed changes to the amount of wetland impacts, revision to the restoration plan, and/or submittal of new information (See B2) for review and approval before the proposed change is implemented.
- B5. The Applicant shall restore all temporal wetland impacts as described in the *Restoration Plan for Temporary Disturbances to Wetlands* (hereafter called the "Restoration Plan") provided by Sound Transit, and dated January 22, 2014, or as modified by this Order or revised and approved by Ecology.
- B6. The Applicant shall submit any changes to the Restoration Plan in writing to Ecology (see A2) for review and approval before work begins.

- B7. The Applicant shall get review and written approval from Ecology of any plan changes required if problems arise during the restoration of the wetland sites.

Implementation

- B8. Unless otherwise approved by Ecology in writing, the Applicant shall complete the restoration plan (seeding) for all temporal disturbances to emergent wetlands as soon as conditions allow for seed germination and establishment or Ecology may require additional compensation to account for additional temporal loss of wetland functions.
- B9. The Applicant shall ensure that all excess excavated site material is disposed of in an appropriate location outside of wetlands and their buffers at the wetland restoration site and above the 100-year floodplain.
- B10. The Applicant shall ensure that no material is stockpiled within existing wetlands and their buffers at the wetland restoration site(s) at any time, unless provided for in the Ecology-approved Mitigation Plan.
- B11. The Applicant shall ensure that no construction debris is deposited within existing wetland and their buffers at the wetland restoration site(s) at any time, unless provided for in the Ecology approved Restoration Plan.
- B12. The Applicant shall not use polyacrylamide at the restoration sites.
- B13. The Applicant shall not use hay or straw on exposed or disturbed soil at the restoration site(s).
- B14. If weed-barrier fabric is used on the site, the Applicant shall use only permeable, fully biodegradable, non-toxic weed-barrier fabric for entire-site and/or individual plant weed control.
- B15. Seed mixes for restoration of temporary disturbances must contain only native, perennial, annual, non-invasive plant species.
- B16. Until the Applicant has received written notice from Ecology that the Restoration Plan has been fully implemented, the Applicant's obligation under Condition B5 to restore temporal wetland impacts is not met.

C. Water Quality Conditions:

- C1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-200(1)(e)(i).

C2. In-Water Construction Water Quality Sampling and Monitoring: A Water Quality Protection and Monitoring Plan (Plan) shall be developed and implemented. The Plan shall be submitted to Ecology per Condition A2 for review and approval at least 30 days prior to start of construction. "In-water construction" is defined as all work below the ordinary high water mark of Hill Creek Tributary North and Hill Creek Tributary South.

The Plan shall include the following minimum requirements:

- a. Locations of samples: Locations of water quality sampling sites shall be identified and described in the Plan and on a map of the project area. At a minimum, sampling shall take place at the point of compliance as specified in WAC 173-201A-200(1)(e)(i), which allows a 100-foot temporary area of mixing for turbidity resulting from disturbance of in-place sediments in Hill Creek Tributary North and Hill Creek Tributary South. Background samples shall be collected outside the area of influence of the in-water work. Background samples shall be collected at the same frequency as the point of compliance samples.
- b. Number of samples: Number and frequency of water quality samples to be taken.
- c. Parameter to be sampled: Turbidity shall be sampled for this project.
- d. Equipment: Sampling for turbidity is to be accomplished using a turbidometer properly calibrated according to the operator's manual.
- e. Best Management Practices (BMPs): A description of the BMPs that will be used during construction to protect water quality.
- f. Detection of exceedances: Water quality standards for turbidity in "Core Summer Salmonid Habitat" waters are as follows: turbidity shall not exceed 5 NTU over background conditions when the background is 50 NTU or less, or a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. If exceedances of this standard at the point of compliance specified in WAC 173-201A-200(1)(e)(i) is detected through water quality sampling and monitoring, the Applicant shall immediately take action to stop, contain, and prevent unauthorized discharges or otherwise stop the violation and correct the problem. After such an event, the Applicant shall assess the efficacy of the site BMPs and update or improve the BMPs used at the work site in an effort to reduce or prevent recurrence of the turbidity exceedance.
- g. Reporting: If no exceedances are detected, results of water quality sampling, as determined by the Plan, shall be forwarded to Ecology on a monthly basis in accordance to Condition A2.

- h. Notification of exceedances: Notification of exceedances that are detected through water quality sampling shall be made to Ecology within 24 hours of occurrence. Notification shall be made with reference to Order #11277, Attn: 401/CZM Federal Project Manager, by telephone at (425) 649-7129 or (425) 649-7000, or by fax to (425) 649-7098. The Applicant shall, at a minimum, provide Ecology with the following information:
- i. A description of the nature and cause of exceedance.
 - ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance.
 - iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
 - iv. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the exceedance, turbidity results and location, photographs, and any other pertinent information.

D. Conditions for Construction Activities:

Upland Conditions:

- D1. Applicant shall obtain and comply with a Construction Stormwater General Permit for this project.
- D2. 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.
- D3. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- D4. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- D5. 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.
- D6. 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.

- D7. Clean Fill Criteria: Applicant shall ensure that fill (soil) placed for the proposed project does not contain toxic materials in toxic amounts.

In-Water Conditions:

- D8. The Applicant shall use non-toxic hydraulic fluids for all equipment working within watercourses and wetlands.
- D9. Culvert replacements shall be conducted during low-flow conditions and in the dry to the extent practicable.
- D10. If cast in place, wet concrete/grout shall be prevented from entering waters of the state. Forms for any concrete/grout structure shall be constructed to prevent leaching of wet concrete/grout. Impervious materials shall be placed over any exposed concrete/grout not lined with the forms that will come in contact with state waters. Forms and impervious materials shall remain in place until the concrete/grout is cured.
- D11. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology that fisheries resources may be adversely affected.
- D12. All manmade debris that has been deposited below the Ordinary High Water Line within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Concrete rubble, metal debris, and other debris in the construction work corridor that has washed into wetland and freshwater areas shall be removed from the project area.

E. Emergency/Contingency Measures:

- E1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- E2. 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.
- E3. 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.
- E4. 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 Manager at (425) 649-7129 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.

F. Timing Requirements

- F1. Work below the Ordinary High Water Line (OHWL) shall not occur from October 1 through June 15 of any year for the protection of fish.
- F2. This Order expires 3 years from the date of issuance of the Corps permit.

G. Reporting and Notification Requirement Conditions

- G1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager:
 - 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-2013-922, Order #11277 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

- G2. If the project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit per Condition A2 a written construction status report and submit status reports every 12 months until construction and planting is complete.

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:

Rebekah Padgett
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008
(425) 649-7129
rebekah.padgett@ecy.wa.gov

MORE INFORMATION

Pollution Control Hearings Board Website

www.eho.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 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



Paul Anderson, Unit Supervisor
Shorelands and Environmental Assistance Program
Northwest Regional Office



March 18, 2015

ATTACHMENT A

**BURLINGTON NORTHERN SANTA FE RAILWAY
SEATTLE-TO-TACOMA SOUNDER COMMUTER RAIL EASEMENTS
AND IMPROVEMENTS (EASEMENT 4) PROJECT
Water Quality Certification Order #11277**

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

I have read and understand the conditions of Order #11277 Section 401 Water Quality Certification for the Burlington Northern Santa Fe Railway Seattle-to-Tacoma Sounder Commuter Rail Easements and Improvements (Easement 4) 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