



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

August 15, 2011

BNSF
Attn: Mr. Glen M. Gaz
2454 Occidental Avenue South, Suite 2D
Seattle, WA 98134-1451

Re: Water Quality Certification Order No. **8694** for Corps Public Notice No. NWS-2010-439, to fill wetlands for the BNSF Railway – Longview Runaround Project, Cowlitz County, Washington

Dear Mr. Gaz:

On June 6, 2011, 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 to construct a bypass track and maintenance and access road within an approximately 1.5 mile segment of the BNSF corridor approximately three (3) miles south of the City of Longview, between Longview Junction and Carrols, Cowlitz County, Washington.

On behalf of the State of Washington, Ecology certifies that the work described in the original 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 Lori Ochoa at (360) 407-6926. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Perry J Lund
Southwest Regional Office
Shorelands and Environmental Assistance Program

LO:th
Enclosure

cc: Pierre Bordenave, JLP Environmental
Ron Wilcox, U.S. Army Corps of Engineers

e-cc: ECY RE FEDPERMITS
Loree Randall – HQ, SEA
Lori Ochoa – SWRO, SEA
Kate Thompson – HQ, SEA
Brad Murphy – HQ, SEA
Rebecca Schroeder – SWRO, SEA
Deborah Cornett - SWRO, WQ

BY CERTIFIED MAIL: 7010 1670 0002 4158 0893

**IN THE MATTER OF GRANTING A
WATER QUALITY
CERTIFICATION TO
BNSF Railway
ATTN: Mr. Glen Gaz**
in accordance with 33 U.S.C. 1341
(FWPCA § 401), RCW 90.48.120, RCW
90.48.260 and Chapter 173-201A WAC

) **ORDER # 8694**
) **Corps Reference No. NWS-2010-439**
) To construct the “Longview Runaround Project”;
) Wetlands, Cowlitz County, Washington
)
)
)

TO: BNSF Railway
ATTN: Mr. Glen Gaz
2454 Occidental Avenue South, Suite 2-D
Seattle, WA 98134-1451

On June 6, 2011, BNSF Railway submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting 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 Chapter 173-225 WAC on June 6, 2011.

The project is located within a 1.5-mile segment of the BNSF corridor from BNSF milepost (MP) 100.4 to MP 102.1, approximately 3 miles south of Longview, between Longview Junction and Carrolls, Cowlitz County, Washington; Sections 11, 12, and 13, Township 7 North, Range 2 West; WRIA 26, Cowlitz Watershed.

The project will construct by-pass tracks, including switches and signals, west of the existing switching yard and mainline tracks to improve rail operations to and from the Port of Longview. A new 1.5-mile maintenance and access road will be constructed directly west of the new by-pass tracks. All of the work will occur within the BNSF Right-of-Way (ROW).

The project will permanently fill 1.29 acres of Category II wetlands within the BNSF ROW. Mitigation to compensate for the proposed unavoidable wetland impacts will occur off site through the purchase of 1.55 credits at the Columbia River Mitigation Bank (CRMB).

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, 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:

1. For purposes of this Order, the term "Applicant" shall mean BNSF Railway and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Southwest Regional Office, Attn: Federal Permit Manager, SEA Program, P.O. Box 47775, Olympia, WA 98504-7775, or loch461@ecy.wa.gov. Any submittals shall reference Order No. **8694** and Corps No. **NWS-2010-439**.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on June 6, 2011. 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.
4. 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.

5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue a Section 404 permit.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. Failure to comply with the Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

B. Timing:

1. This Order will expire five (5) years from the date of issuance of the Corps permit.

C. Notification Requirements:

1. The Applicant shall provide written notification (FAX, e-mail, or mail) to Ecology's Southwest Regional Office Federal Project Coordinator in accordance with condition A.2 above for the following activities:
 - a. At least ten (10) days prior to a pre-construction meeting
 - b. At least ten (10) days prior to the onset of any work on site
 - c. At least ten (10) days prior to the onset of in-water work, including wetlands

- d. At least ten (10) days prior to the onset of work at the wetland mitigation site
- e. Immediately following a violation of the state water quality standards or any condition of this Order
- f. Within fourteen (14) days after completion of construction.

D. Construction, Equipment Staging and Maintenance:

1. 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.
2. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
3. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
4. All construction debris shall be properly disposed of in a manner to prevent it from entering wetlands and/or wetland buffers.
5. All work within the project limits shall be clearly marked/staked prior to construction. Clearing limits, travel corridors, and stockpile sites shall be clearly marked. Sensitive areas and buffers that are to be protected from disturbance shall be marked so as to be clearly visible to equipment operators. All project staff shall be trained to recognize construction fencing or flagging that identifies sensitive area boundaries. Equipment shall enter and operate within the marked clearing limits corridors and stockpile areas.
6. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in a confined area in order to prevent containment to waters of the state. Fueling areas will be provided with adequate spill containment.
7. Appropriate Best Management Practices (BMPs) shall be implemented to minimize track-out during construction.
8. Staging area will be located a minimum of 50 feet and, where practical, 200 feet from waters of the state (including wetlands), unless authorized by Ecology.
9. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working area shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
10. Clean Fill Criteria: The Applicant shall ensure that fill (soil) placed for the proposed project does not contain toxic materials in toxic amounts.

E. Wetland Compensatory Mitigation Conditions:

1. Impacts to aquatic resources shall be mitigated through the use of the Columbia River Wetland Mitigation Bank as described in the "Waters of the U.S. Delineation, Impacts, and Mitigation Report" (hereafter called the "Mitigation Plan") dated March 2011, prepared by JLP Environmental except as modified below in this Order or revised and approved by Ecology. Credits to be withdrawn from the bank will be a total of 1.55 credits in accordance with the Columbia River Wetland Mitigation Bank Instrument. The Sponsor for this bank is:

Clark County Mitigation Partners, LLC
15600 NE 173rd Street
Woodinville, WA 98072

2. Mitigation Bank Credit Purchase: The Applicant shall submit the following to Ecology per Condition A.2 of this Order:
 - a. The Applicant shall obtain and submit registered documentation from the bank sponsor identifying the purchase of 1.55 credits for the project to Ecology.
 - b. This documentation must be submitted to Ecology within 60 days of the issuance of this amendment.
 - c. This document must be registered at the Cowlitz County Auditor's office and must include the Permit Order number, Permit Order issuance date, and the amount of credits required by the Order.
3. The Applicant shall notify Ecology (per Condition A.2. above) of any changes to the amount of wetland impacts, revision of the mitigation plan, and submittal of new information being registered at the Cowlitz county Auditor's office.
4. The Applicant shall complete the purchase of mitigation bank credits before the impacts to wetlands occur or Ecology may require additional compensation to account for temporal loss.

F. Emergency/Contingency Measures:

1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
2. 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.

3. 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 waters of the state.
4. 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, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant or operator shall immediately take the following actions:
 - a. Cease operations that are causing the compliance problem.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
 - d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
 - e. 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 Southwest Federal Project Coordinator at (360) 407-6926 or (360) 407-6300.
 - f. Submit a detailed written report to Ecology's Federal Permit Coordinator 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.

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 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 Rd 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:

Lori Ochoa
Department of Ecology
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
loch461@ecy.wa.gov

MORE INFORMATION

Pollution Control Hearings Board Website

www.eho.wa.gov/Boards_PCHB.aspx

Chapter 43.21B RCW - Environmental Hearings Office – Pollution Control Hearings Board

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

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



Perry J Lund, Unit Supervisor
Shorelands and Environmental Assistance Program
Southwest Regional Office
Department of Ecology

8/15/2011

Date

Attachment A
Statement of Understanding
Water Quality Certification Conditions
(See Condition A. 9)

BNSF Railway
Longview Runaround
Water Quality Certification Order # **8694**
And
Corps Reference # NWS-2010-439

I, _____, state that, I will be involved as an agent or contractor for BNSF in the site preparation and/or construction of the Longview Runaround project located within the BNSF corridor from BNSF milepost (MP) 100.4 to MP 102.1, approximately 3 miles south of the City of Longview, Cowlitz County, Washington. I further state that I have read and understand the relevant conditions of the Washington Department of Ecology Water Quality Certification Order #**8694** and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

Phone

Company

