



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Region Office
PO Box 330316, Shoreline, WA 98133-9716 • 206-594-0000

June 2, 2022

BNSF Railway Company
ATTN: Michael Schaefer
4515 Kansas Avenue
Kansas City, KS 66106

RE: Section 401 Water Quality Certification Denial without Prejudice, Order No. **21181**,
BNSF Bridge 0050-0070.0 Replacement Project, Skagit County, Washington

Dear Michael Schaefer:

On June 7, 2021, the Department of Ecology (Ecology) received a request for a Section 401 Water Quality Certification for the above-referenced project. Ecology has one year from the Section 401 Water Quality Certification request to issue its decision.

At this time, Ecology has not received the necessary information to have reasonable assurance that the project will meet state water quality laws. Therefore, pursuant to Section 401 of the Clean Water Act, Chapter 90.48 RCW, and Chapter 173-201A WAC, Ecology is denying without prejudice BNSF Railway Company's request for a Section 401 Water Quality Certification. Receipt of a denial without prejudice does not preclude you from submitting a new request for a Section 401 Water Quality Certification at a later date.

If you have any questions, please contact Rebekah Padgett at (425) 365-6571 or rebekah.padgett@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Joe Burcar, Section Manager
Northwest Regional Office
Shorelands and Environmental Assistance Program

Enclosure (1)

Sent by electronic mail: michael.schaefer2@bnsf.com

BNSF Bridge 0050-0070.0 Replacement

Aquatics No. 139948

June 2, 2022

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e-cc: Scott Swarts, Jacobs Engineering Group Inc.
David Moore, U.S. Army Corps of Engineers
Steve Fischer, U.S. Coast Guard
Danny McReynolds, U.S. Coast Guard
Jenna Friebe, Skagit County Drainage and Irrigation Districts Consortium, LLC
Daryl Hamburg, Skagit County Dike District #17
Dan LeFaber, Skagit County Dike District #12
Brad Johnson, City of Burlington
Marianne Manville-Ailles, City of Mount Vernon
Bob Warinner, Washington State Department of Fish and Wildlife
Brenda Werden, Washington Department of Natural Resources
Chris Luerkens, Department of Ecology
Kayla Eicholtz, Department of Ecology
Dave Radabaugh, Department of Ecology
Lynn Schmidt, Department of Ecology
Elizabeth Fint, Department of Ecology
Loree' Randall, Department of Ecology
Rebekah Padgett, Department of Ecology
ecyrefedpermits@ecy.wa.gov – Aquatics No. 139948



IN THE MATTER OF DENYING SECTION 401)	ORDER No. 21181
WATER QUALITY CERTIFICATION TO)	BNSF Bridge 0050-0070.0 Replacement Project,
BNSF Railway Company)	Skagit County, Washington
in accordance with 33 U.S.C. 1341 (FWPCA)	
§ 401), RCW 90.48.260 and Chapter)	
173-201A WAC)	
)	

BNSF Railway Company
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On June 7, 2021, the Department of Ecology (Ecology) received a request for a Section 401 Water Quality Certification (WQC) via a Joint Aquatic Resources Permit Application (JARPA) for the above-referenced project. Ecology has one year from the receipt of the request for a WQC to issue its decision.

On May 13, 2022, Ecology sent you a letter explaining that we needed the following information:

- Revised project description, plan set, construction methodology, Water Quality Monitoring and Protection Plan, hydraulic analysis for the proposed bridge and temporary structures, and other supporting documents reflecting changes in design and construction approach to address comments received.
- Debris Management Plan for handling of large wood in order to minimize the potential for log jams to pile up at the new bridge as well as during construction activities, causing potential bridge and dike damage, as well as flood risk.
- State Environmental Policy Act determination.

Without the Water Quality Monitoring and Protection Plan and the other plans identified above, Ecology does not have the information needed to demonstrate that the project will meet state water quality laws.¹ Additionally, SEPA² has not been completed, as required by state law. Therefore, pursuant to Section 401 of the Clean Water Act, Chapter 90.48 RCW and Chapter 173-201A WAC, BNSF Railway Company's request for a WQC is denied without prejudice.

Receipt of a denial without prejudice does not preclude you from submitting the information identified above with a new request for a WQC at a later date.

¹ Chapter 90.48 RCW, Chapter 173-201A WAC, WAC 173-201A-300

² Chapter 43.21C RCW, Chapter 173-802 WAC, Chapter 197-11 WAC

YOUR RIGHT TO APPEAL

You have a right to appeal this Denial Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Denial 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 all of the following within 30 days of the date of receipt of this Order:

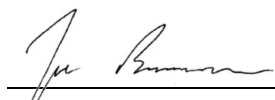
- File your appeal and a copy of this Denial Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Denial Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

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, Suite 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

SIGNATURE



Joe Burcar, Section Manager
Shorelands and Environmental Assistance Program
Northwest Regional Office
Department of Ecology

6/2/2022

Date