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
Page 2 of 2

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 Friebel, 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 WATER QUALITY CERTIFICATION TO BNSF Railway Company in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.260 and Chapter 173-201A WAC

ORDER No. 21181 BNSF Bridge 0050-0070.0 Replacement Project, Skagit County, Washington

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

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. Additionally, SEPA 2 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

<table>
<thead>
<tr>
<th>Street Addresses</th>
<th>Mailing Addresses</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Department of Ecology</strong></td>
<td><strong>Department of Ecology</strong></td>
</tr>
<tr>
<td>Attn: Appeals Processing Desk</td>
<td>Attn: Appeals Processing Desk</td>
</tr>
<tr>
<td>300 Desmond Drive SE</td>
<td>PO Box 47608</td>
</tr>
<tr>
<td>Lacey, WA 98503</td>
<td>Olympia, WA 98504-7608</td>
</tr>
<tr>
<td><strong>Pollution Control Hearings Board</strong></td>
<td><strong>Pollution Control Hearings Board</strong></td>
</tr>
<tr>
<td>1111 Israel RD SW, Suite 301</td>
<td>PO Box 40903</td>
</tr>
<tr>
<td>Tumwater, WA 98501</td>
<td>Olympia, WA 98504-0903</td>
</tr>
</tbody>
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SIGNATURE

Joe Burcar, Section Manager 6/2/2022
Shorelands and Environmental Assistance Program
Northwest Regional Office
Department of Ecology