



May 4, 2015

IP-WC-2014-32-00454

IP-WC-2014-32-00455

BNSF Railroad
John Stilley
4515 Kansas Ave.
Kansas City, KS 66106

Dear Mr. Stilley:

Re: Amendment to Permit to discharge dredged or fill material into the La Crosse River Marsh and to construct a bridge over the La Crosse River

We amended your permit issued on 02/06/2015 with dockets IP-WC-2014-32-00454 and IP-WC-2014-32-00455 which authorizes you to discharge dredged or fill material into La Crosse River Marsh impacting 7.2 acres of wetland and to construct a bridge over the La Crosse River. The project consists of constructing approximately four miles of new railroad track adjacent to existing railroad track on a BNSF right-of-way which runs from Gillette Street south to STH 16 in the City of La Crosse, La Crosse County. Approximately two of the four miles of new railroad track will run through the La Crosse River Marsh.

We amended Condition No. 25 based on information from the Department's Bureau of Natural Heritage Conservation. Attached is a copy of the Permit Amendment containing that new condition, along with a copy of your original permit which is still in effect unless otherwise noted.

If you have any questions about this permit amendment, please call me at (608) 785-9010 or email Carrie.Olson@wisconsin.gov.

Sincerely,

Carrie Olson
Water Management Specialist

cc: David Studenski- Project Manager, U.S. Army Corps of Engineers
Nate Sampson- La Crosse County Zoning Administrator
Ed McCann- DNR Conservation Warden
Lisie Kitchel- DNR Natural Heritage Conservation Department
Edwina Kavanaugh-DNR Bureau of Legal Services
Doug Dorsey- Hanson Professional Services
Attorney Sarah Williams- MEA
Anthony Russomanno- Wisconsin Department of Justice

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PERMIT AMENDMENT

BNSF Railway c/o John Stilley, 4515 Kansas Ave., Kansas City, KS 66106 is hereby granted under Sections 30.123(8) and 281.36, Wisconsin Statutes, and 401 CWA, an amendment to permit numbers IP-WC-2014-32-00454 and IP-WC-2014-32-00455, which authorized the permittee to discharge dredged or fill material into La Crosse River Marsh and construct a bridge over the La Crosse River. The project runs from Gillette Street southward to STH 16, through Sections 21, 28, and 33 of Township 16 North, Range 7 West, and Sections 4 and 9 of Township 15 North, Range 7 West, La Crosse County. This is an approved amendment to Condition No. 25 of the Wetland and Bridge Permit based on the additional Findings of Fact and Conclusions of Law shown below.

The applicant is bound by the conditions of the original permit and by any conditions of this amendment.

AMENDED PERMIT CONDITIONS

1. All original permit conditions remain in effect, except where modified by the amended permit condition below.
2. Condition No. 25 in the Permit is modified as shown by the underlined language below:

The project must comply with state and/or federal endangered species laws, follow-up actions, and protection recommendation as reported by WDNR Natural Heritage Conservation's Endangered Resources review report. No construction may occur within the Wisconsin State Endangered Species Black Tern's nesting period from May 25 to July 31 (timeframe was adjusted based on site conditions at La Crosse River-Myrick Marsh) unless BNSF obtains from the Department's Bureau of Natural Heritage Conservation an Incidental Take Permit or other authorization that removes or revises the period during which construction is prohibited.

ADDITIONAL FINDINGS OF FACT

1. On 2/06/2015, BNSF c/o John Stilley had been granted Wetland and Bridge Permits with Numbers IP-WC-2014-32-00454 and IP-WC-2014-32-00455 under Sections 30.123(8) and 281.36, Wisconsin Statutes, and 401 CWA. The permits are for BNSF's project constructing four miles of new railroad track adjacent to existing railroad track on BNSF right-of-way, with approximately two miles of the new railroad track running through the La Crosse River-Myrick Marsh. Additionally, an approximately 1,050 feet long by 42 feet wide crossover/signal pad and a 550 foot long service road (average widths 22 to 30 feet) used to provide access to the track crossover switches and signals will be constructed along the east side of the existing track, resulting in 7.2 acres of wetland impact. A 96 feet long bridge will be constructed over the La Crosse River, along with 3 additional bridges through the La Crosse River-Myrick Marsh adjacent to existing rail bridges to maintain hydrology and flood equalization.

2. On 04/14/2015, BNSF Railway c/o John Stilley filed a request with the Department to obtain an incidental take permit for the Black Tern which would allow BNSF to continue construction through the La Crosse River-Myrick Marsh during the Black Tern's nesting period. The project runs from Gillette Street southward to STH 16, through Sections 21, 28, and 33 of Township 16N, Range 7W, and Sections 4 and 9 of Township 15North, Range 7 West, La Crosse County.
3. On 4/16/2015, the Department's Bureau of Natural Heritage Conservation published on the Department web site: (a) a News Release that provided public notice that the BNSF project may result in the incidental taking of Black Terns, and (b) a Jeopardy Assessment for the proposed Incidental Taking Permit that stated that avoiding construction during the Black Tern's nesting period will not be required as a conservation measure.
4. On 04/28/2015, the Bureau of Natural Heritage Conservation determined that Black Terns had returned to the marsh but would not begin nesting until late May, with a nesting period starting circa 05/25/2015.
5. To assure that the Wetland and Bridge Individual Permit is consistent with the conservation measures, nesting period, and any construction prohibition period determined by the Bureau of Natural Heritage Conservation, the Department is amending Condition No. 25 to show a nesting period starting circa 05/25/15 and allow construction during the nesting period if an Incidental Take permit or other authorization is issued that removes or revises the period during which construction is prohibited.
6. The Department has determined that consistency between the Wetland and Bridge Individual Permit Condition No. 25 and any Incidental Take permit issued by the Bureau of Natural Heritage Conservation constitutes good cause to amend Condition No. 25 as shown. The proposed amendment to the permit will not affect the Findings of Fact and Conclusions of Law of the original permit but adds the additional Findings of Fact and Conclusions of Law shown in this amendment. A copy of the original permit is attached to this amendment.

ADDITIONAL CONCLUSIONS OF LAW

1. The Department has authority under Sections 30.123(8) and 281.36, Wisconsin Statutes, and 401 CWA and the foregoing Findings of Fact, to issue an order granting the permit amendment requested.
2. Section 30.2095(2), Wisconsin Statutes, authorizes the Department to modify any permit issued under s.30.01 to 30.29 before its expiration for good cause.
3. The Department has complied with Section 1.11, Wisconsin Statutes and NR 150, Wisconsin Administrative Code.

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions shall be filed. For judicial review of a decision pursuant to

sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

To request a contested case hearing of any individual permit decision pursuant to section 30.209, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources, P.O. Box 7921, Madison, WI, 53707-7921. The petition shall be in writing, shall be dated and signed by the petitioner, and shall include as an attachment a copy of the decision for which administrative review is sought. If you are not the applicant, you must simultaneously provide a copy of the petition to the applicant. If you wish to request a stay of the project, you must provide information, as outlined below, to show that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment. If you are not the permit applicant, you must provide a copy of the petition to the permit applicant at the same time that you serve the petition on the Department.

The filing of a request for a contested case hearing is not a prerequisite for judicial review and does not extend the 30 day period for filing a petition for judicial review.

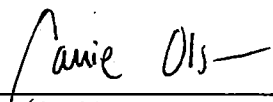
A request for contested case hearing must meet the requirements of section 30.209, Wis. Stats., and sections NR 2.03, 2.05, and 310.18, Wis. Admin. Code, and if the petitioner is not the applicant the petition must include the following information:

1. A description of the objection that is sufficiently specific to allow the department to determine which provisions of this section may be violated if the proposed permit or contract is allowed to proceed.
2. A description of the facts supporting the petition that is sufficiently specific to determine how the petitioner believes the project, as proposed, may result in a violation of Chapter 30, Wis. Stats.;
3. A commitment by the petitioner to appear at the administrative hearing and present information supporting the petitioner's objection.

If the petition contains a request for a stay of the project, the petition must also include information showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

Dated at La Crosse Service Center, Wisconsin on 05/04/2015.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES
For the Secretary

By 

Carrie Olson
Water Management Specialist