



February 6, 2015

IP-WC-2014-32-00454

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

Dear Mr. Stilley:

The Department has completed review of your proposal to discharge dredged or fill material into the La Crosse River Marsh impacting 7.2 acres of wetland and to construct a bridge over the La Crosse River. We have determined that your project meets state standards. Enclosed is your combined state waterway and wetland permit which approves your project and lists the conditions which must be followed. Please read your permit carefully so that you are fully aware of what is expected of you.

Your enclosed permit and state water quality certification confirms the state certification necessary for proceeding under an approval pursuant to a federal permit issued by the Army Corps of Engineers.

Please note you are required to submit photographs of the completed project within 7 days after you've finished construction. This helps both of us to document the completion of the project and compliance with the permit conditions.

Your next step will be to notify me of the date on which you plan to start construction and again after your project is complete.

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

Sincerely,

Carrie Olson
Water Management Specialist

cc: David Studenski, U.S. Army Corps of Engineers
La Crosse County Zoning Administrator
City of La Crosse Planning/Inspection
DNR Mitigation Coordinator - WT/3

DNR Conservation Warden
Hanson Professional Services

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**STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES**

**Wetland and Bridge Individual Permit
IP-WC-2014-32-00454**

Burlington Northern Santa Fe (BNSF) Railway c/o John Stilley is hereby granted under Sections 30.123(8) and 281.36, Wisconsin Statutes, and 33 U.S.C.S §1341 (CWA §401) a permit to discharge dredged or fill material into wetland and to construct a bridge over the La Crosse River. The project consists of constructing four miles of railroad track adjacent to existing railroad track on BNSF right-of-way, with approximately two miles of new railroad track through the La Crosse River 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 Marsh adjacent to existing rail bridges to maintain hydrology and flood equalization.

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.

The permit is subject to the following conditions:

PERMIT

1. You must notify Carrie Olson at (608) 785-9010 or Carrie.Olson@wisconsin.gov before starting the discharge and again not more than 5 days after the discharge is complete.
2. You must complete the discharge as described on or before 02/06/2018. If you will not complete the discharge by this date, you must submit a written request for an extension prior to the expiration date of the permit. Your request must identify the requested extension date and the reason for the extension. A permit extension may be granted, for good cause, by the Department. You may not begin or continue construction after the original permit expiration date unless the Department grants a new permit or permit extension in writing.
3. This permit does not authorize any work other than what you specifically describe in your application and plans, and as modified by the conditions of this permit. If you wish to alter the project or permit conditions, you must first obtain written approval of the Department.
4. You are responsible for obtaining any permit or approval that may be required for your project by local zoning ordinances and by the U.S. Army Corps of Engineers before starting your project.
5. Upon reasonable notice, you shall allow access to your project site during reasonable hours to any Department employee who is investigating the project's construction, operation, maintenance or permit compliance.
6. The Department may modify or revoke this permit if the project is not completed according to the terms of the permit, or if the Department determines the activity results in significant adverse impact to wetland functional values, in significant adverse impact to water quality, or in other significant adverse environmental consequences.

7. You must post a copy of this permit at a conspicuous location on the project site, for at least five days prior to construction, and remaining at least five days after construction. You must also have a copy of the permit and approved plan available at the project site at all times until the project is complete.
8. Your acceptance of this permit and efforts to begin work on this project signify that you have read, understood and agreed to follow all conditions of this permit.
9. You must submit a series of photographs to the Department, within one week of completion of work on the site. The photographs must be taken from different vantage points and depict all work authorized by this permit.
10. You, your agent, and any involved contractors or consultants may be considered a party to the violation pursuant to Section 281.36 (13), Wis. Stats., for any violations of Section 281.36, Wisconsin Statutes, or this permit.
11. Construction shall be accomplished in such a manner as to minimize erosion and siltation into surface waters. Erosion control measures (such as silt fence and straw bales) must meet or exceed the technical standards of ch. NR 151, Wis. Adm. Code. The technical standards are found at: http://dnr.wi.gov/topic/stormwater/standards/const_standards.html.
12. Authorization hereby granted by the Department is transferable to any person upon prior written approval of the transfer by the Department.
13. All equipment used for the project including but not limited to tracked vehicles, barges, boats, hoses, sheet pile and pumps shall be de-contaminated for invasive and exotic viruses and species prior to use and after use.

The following steps must be taken *every time* you move your equipment to avoid transporting invasive and exotic viruses and species. To the extent practicable, equipment and gear used on infested waters shall not be used on other non-infested waters.

- a. Inspect and remove aquatic plants, animals, and mud from your equipment.
 - b. Drain all water from your equipment that comes in contact with infested waters, including but not limited to tracked vehicles, boats, hoses, sheet pile and pumps.
 - c. Dispose of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.
 - d. Wash your equipment with hot (>104° F) and/or high pressure water,
OR -
 - e. Allow your equipment to dry thoroughly for 5 days.
14. You must restrict the removal of vegetative cover, tree canopy cover, and exposure of bare ground to the minimum amount necessary for construction.
 15. Invasive Species. All project equipment shall be decontaminated for removal of invasive species prior to and after each use on the project site by utilizing other best management practices to avoid the spread of invasive species as outlined in NR 40, Wis. Adm. Code.
 16. You are not allowed to temporarily or permanently stockpile excavated or fill material in any of the unpermitted wetlands.

17. The silt fencing should be placed within the proposed wetland fill area to aid in delineating where the contractor can work and to protect wetlands outside of the construction site.
18. At no time shall dewatering activities directly discharge to wetlands or waterways without prior effective water quality treatment and WPDES approvals.
19. Any fill removed from the wetland during this project must be transferred to an approved upland location.
20. Suitable fill material. All fill authorized under this permit must consist of clean suitable soil material, as defined by s. NR 500.03(214), Wis. Admin. Code, free from hazardous substances as defined by s. 289.01(11), Wis. Stats., and free from solid waste as defined by s. 289.01(11) and (33), Wis. Stats.
21. Any structure or fill authorized under this permit shall be properly maintained to ensure no additional impacts occur to the adjacent wetlands.
22. Equipment use. The equipment used in the wetlands must be low ground weight equipment as specified by the manufacturer specifications.
23. Construction equipment with diesel or gasoline engines will be properly maintained, no fuel storage or service facilities area allowed in or near the marsh.
24. Preventive Measures. Measures must be adopted to prevent potential pollutants from entering a wetland or waterbody. Construction materials and debris, including fuels, oil, and other liquid substances, will not be stored in the construction area in a manner that would allow them to enter a wetland or waterbody as a result of spillage, natural runoff, or flooding. If a spill of any potential pollutant should occur, it is the responsibility of the permittee to remove such material, to minimize any contamination resulting from this spill, and to immediately notify the State Duty Officer at 1-800-943-0003.
25. The project must comply with state and/or federal endangered species laws, follow-up actions, and protection recommendations 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 15 to July 31.
26. You are required to follow the WDNR's Fencing Guidance for proper installation of silt fence to protect impacts to turtles.
27. Track and bridge construction methods and materials must adequately stabilize the railway to safely transport products by rail through the La Crosse River Marsh and over the La Crosse River.
28. Follow all applicable Federal Railroad Administration (FRA) guidelines, including Safety Advisory #2014-01 for the safe transport of petroleum crude oil by rail tank cars.
29. The "Summary of Emergency Response Plan and Capabilities" document must be adhered to in the event of a hazardous material incident in or near La Crosse, Wisconsin.
30. BNSF is responsible for the mitigation and restoration of the La Crosse River and Marsh if a train derailment or spill occurs. BNSF and consultants are responsible for performing

remediation and restoration activities in coordination with appropriate Federal, State, and Local agencies.

31. You must implement a re-vegetation plan which promotes native species growth and discourages non-native species from invading.
32. The temporary crossing and tracking mats must be completely removed hauled to an upland location as soon as practicable or when construction is finished.
33. The temporary crossing location must be maintained to allow base flow to safely pass and must provide passage around for any recreational user.
34. The bridge shall be maintained in good repair by the Owner.

FINDINGS OF FACT

1. BNSF c/o John Stilley has filed an application for a permit to discharge dredged or fill material into wetland and to 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.
2. The project will consist of constructing four miles of railroad track adjacent to existing railroad track on BNSF right-of-way, with approximately two miles of new railroad track through the La Crosse River 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 Marsh adjacent to existing rail bridges to maintain hydrology and flood equalization.
3. The applicant was required to compensate for wetland losses through compensatory mitigation. The Department evaluated the wetland mitigation proposal and determined that WI Wetland Conservation Trust (WWCT) in-lieu fee program mitigation credits could fulfill the compensation requirement as no credits were available from an approved mitigation bank. The Department determined that the applicant must purchase 10.56 mitigation credits to compensate for the loss of 7.28 acres of shallow/open water wetland at a 1.45:1 ratio. An Affidavit of Compensatory Mitigation Credit Purchase was submitted to the Department by the WWCT on January 9, 2015 for the purchase of 10.56 mitigation credits, fulfilling the compensation requirement.
4. An informational hearing was held on January 7, 2015 at the Black River Beach Neighborhood Center in La Crosse to provide an opportunity for public input and comments on the proposed project. Over 150 citizens attended with 48 citizens providing testimony. The comments received during the hearing and in writing were largely in regards to the protection of the local resources and concern for public safety with the increase in rail traffic and specifically the increase in the transportation of oil.

5. The Department's Bureau of Endangered Resources performed an Endangered Resources Review of the project. A final ER Review is dated November 27, 2014.
6. Individual wetland and waterway crossing permits are "equivalent analysis actions" under NR 150.20 (2) 8 and 11. The Department has analyzed all relevant environmental issues, prepared a detailed environmental analysis, including alternatives and other recent BNSF system improvements and the potential for additional projects of this kind, provided for public comment, and held a public informational hearing related to the proposed rail expansion. Through this equivalent analysis process the Department is meeting the detailed analysis requirement of s. 1.11, Stats. for this project.
7. No practicable alternative exists which would avoid adverse impacts to wetlands, and the project will result in the least environmentally damaging practicable alternative taking into consideration practicable alternatives that avoid wetland impacts. No practicable alternative exists that meets the project purpose; alternative routes for the project are constrained by the high bluffs to the east and wetlands to the west, which would result in a greater environmental impact.
8. All practicable measures to minimize adverse impacts to the functional values of the wetland have been taken. The applicant thoroughly explored multiple configurations and construction materials to minimize impacts while ensuring stability and safety of the railroad embankment and track structure. The chosen route ties into existing stable embankment and was designed with the narrowest practicable embankment fill using non-erodible, well-graded, compacted quarry rock fill. Construction methods were designed based on site-specific geotechnical analyses of soil properties in the area and will utilize fill rather than originally proposed retaining walls to further minimize impacts to the wetland by 0.1 acres. 1.5 horizontal: 1 vertical embankment slopes further reduced the width of fill and minimized wetland impacts.
9. The proposed project will not result in significant adverse impacts to wetland functional values, significant impacts to water quality, or other significant adverse environmental consequences. The wetlands proposed for impact are adjacent to the existing rail track, dominated by invasive species, and not readily available for public recreation or education. The wetland complex does provide wildlife and fisheries habitat and limited water quality protection.
10. The project will result in a direct, permanent loss of 7.2 acres of wetland in a 1077 acre wetland complex. The impact amount is substantial, but was found to have low significance due to avoidance of the more sensitive areas, the proximity to existing fill, spatial integrity of the remaining wetland complex, the proposed mitigation plan, hydrologic capacities, and construction methods proposed.
11. A study of cumulative impacts resulted in a low significance due to the low amount of additional wetland losses and impacts (less than one acre for 13 projects statewide).
12. Secondary impacts will be low due to the spatial integrity of the marsh complex, allowing for the wetland complex to continue to function and provide flood storage, hydrology, fish passage, and wildlife species relocation during construction. The construction methods and materials adequately stabilize the embankment for the safe transport of rail cars.

13. The proposed mitigation will provide wetland water quality, wildlife habitat, and flood and storm water protection functional values as a result of WI Wetland Conservation Trust program mitigation projects within the Upper Mississippi-Black-Root Basin Service watershed.
14. The Department has completed an investigation of the project site and has evaluated the project as described in the application and plans.
15. La Crosse River is a navigable water and no bulkhead exists at the project site.
16. The bridge structure will not materially obstruct navigation because adequate clearance is provided between the surface of the river and the bottom of the bridge.
17. The bridge structure will not be detrimental to the public interest because best management practices will protect water quality during and after construction.
18. The bridge structure will not materially reduce the flood flow capacity of the La Crosse River. Hydraulic analyses were performed for the project which demonstrated the project will cause no change in the regulatory 100-year flood elevation.
19. The proposed project, if constructed in accordance with this permit will not adversely affect water quality, will not increase water pollution in surface waters and will not cause environmental pollution as defined in s. 283.01(6m), Wis. Stats.
20. The Department of Natural Resources has determined that the agency's review of the proposed project constitutes an equivalent analysis action under s. NR 150.20(2), Wis. Adm. Code. The Department has considered the impacts on the human environment, alternatives to the proposed projects and has provided opportunities for public disclosure and comment. The Department has completed all procedural requirements of s. 1.11(2)(c), Wis. Stats., and NR 150, Wis. Adm. Code for this project.
21. The Department of Natural Resources has completed all procedural requirements and the project as permitted will comply with all applicable requirements of Sections 30.123(8) and 281.36, Wisconsin Statutes and Chapters NR 102 & 103 of the Wisconsin Administrative Code.

The applicant was responsible for fulfilling the procedural requirements for publication of notices under s. 30.208(5)(c)1m., and s. 281.36(3p)(d)1m., Stats, and was responsible for publication of the notice of pending application under s.30.208(3)(a) and s. 281.36(3p)(d)1m., Stats. and the notice of public informational hearing under s.30.208(3)(c) and s. 281.36(3p)(d)1m., Stats. Sections 30.208(3)(e) and 281.36(3p)(d)1m., Stats., provides that if no public hearing is held, the Department must issue its decision within 30 days of the 30-day public comment period, and if a public hearing is held, the Department must issue its decision within 20 days after the 10-day period for public comment after the public hearing. Sections 30.208(5)(bm) and 281.36(3p)(d)1m., Stats, requires the Department to consider the date on which the department publishes a notice on its web site as the date of notice.

CONCLUSIONS OF LAW

1. The Department has authority under the above indicated Statutes and Administrative Codes, to issue a permit for the construction and maintenance of this project.

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 sections 30.209 or 281.36.(3q), 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 or 281.36 (3q), Wis. Stats., and section NR 2.03, 2.05, and 310.18, Wis. Adm. 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 discharge under the wetland individual permit is allowed to proceed.
2. A description of the facts supporting the petition that is sufficiently specific to determine how the petitioner believes the discharge, as proposed, may result in a violation of the provisions of this section.
3. A commitment by the petitioner to appear at the administrative hearing and present information supporting the petitioner's objection.
4. 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 02/06/2015.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES
For the Secretary

By Carrie Olson
 Carrie Olson
 Water Management Specialist