From: @
To: Comments
Subject: BNRR BRIDGE
Date: Thursday, March 29, 2018 9:00:37 AM

I absolutely oppose another bridge over our beautiful lake. What we here in Bonner County do not need is more structures especially one that will allow increased train traffic and an increase in the potential for a catastrophic accident. I believe unfortunately it is just a matter of time before we had a serious derailment in the vicinity of the City of Sandpoint. We do not need more traffic, more noise, and degradation of the quality of our resort community.

Sincerely,

Maryann Giddings
Sandpoint, ID

From: Ron
To: Comments
Subject: BNRR BRIDGE
Date: Thursday, March 29, 2018 9:00:34 AM

I absolutely Stand against any consideration for another bridge over our wonderful lake.

The tourist draw to this area is dependent upon maintaining a pristine, unpolluted, area for people to visit and enjoy the recreational opportunities. We need not subject this fragile and beautiful area and the City of Sandpoint to more traffic, more noise, and degradation of the quality of our resort community. The potential for a catastrophic train accident it already too high and the noise and congestion is already far too frequent. How anyone can ignore these facts is unbelievable.

Any increase just increases the already high risk of an eventual train accident and some of the materials carried by the railroad are very hazardous.

Sincerely,

Ron Giddings
Sandpoint, ID

000775

A BETTER LOCATION FOR BNSF BRIDGES ACROSS LAKE PEND OREILLE

According to the photographs and description in the Bee (March 1st) of the second bridge that BNSF intends to build over the lake and the Sandpoint beach, the screwing up of our waterfront will be complete.

It all started back in the nineteenth century when the Northern Pacific built their railroad on the Sand Creek peninsula and over the location of the present bridge. That didn't prevent the people from enjoying the City Beach and boys from swinging out on a rope and diving into the creek.

Then, along comes the state with plans to build a US-95 bypass around Sandpoint along the only logical route, the west side Great Northern tracks. Those stinking cattle trucks and other commercial vehicles would be able to go straight through to and from any distant location without going through town. Those coming to Sandpoint could go directly to schools, homes, industries, and other destinations without cluttering downtown streets, unless that was where they were headed.

But "No!" The downtown merchants were alarmed about the possibility that travelers would not stop in town to buy some chewing gum, or whatever, and Sandpoint would become another Ritzville. They argued that with a Sand Creek Bypass, they could see the Mary-Ann behinds of the downtown stores and turn back from an exit. Nobody seemed to figure that Sandpoint is a destination. The alarmists convinced the State to designate the Sand Creek route for the bypass, and when a new railroad bridge was built north of town, it provided for a four-lane bypass below, a bypass with room enough for only two lanes at the south end.

Unfortunately, some greedy politicians played upon those fears. One owned a large property in the vicinity of the original, state proposed bypass route. He got himself elected mayor, and whenever the bypass issue came up, he failed to recuse himself. And he refused to refer the bypass matters to the Planning Commission, that he knew was 100% opposed to a Sand Creek Bypass. A remark "We're going to make a killing out there" was heard.

Another Sandpoint mayor owned commercial property in Ponderay, and he too failed to recuse himself rom bypass matters. He and other merchants wanted the highway to be the main street of Ponderay.

The campaign to win the citizens approval of the bypass was probably the dirtiest ever encountered here. There were straw polls listing several options, but not mentioning the west side route. The Transportation Department showed west side route way out on the Pine Street Loop to scare the homeowners there, and a survey crew was sent out to stake out a centerline through the front yards. When a citizens group sued the State to prevent construction from beginning, the judge let construction start before rendering his decision, thus preventing an appeal.

The TDI also claimed no responsibility for Sandpoint's internal traffic problems. Now we are stuck with the problems created by sending US-2 traffic through downtown.

Now BNSF is preparing to vastly increase the shipping of fossil fuels through the bottleneck at the City Beach, which will endanger the downtown with long trains of highly volatile oil. Now is the time to pause and consider starting over.

Why not create a transportation corridor for highways and railroads beginning at Algoma Pond at the bend in US-95 (about eight miles south of Sandpoint), continue straight north to near Springy Point, cross the river to near Rocky Point, follow the route of the Great Northern tracks to Bronx Road, connect to US-95, continue east to connect with Highway 200 somewhere beyond Kootenai. This would allow all towns to be free from the noise of transportation, the danger of many intersections and grade crossings, and plenty of room to construct grade separations and other features.

Joseph Henry Wythe
2901 Lower Pack Rver Road
Sandpoint, ID 83864
208-263-8038
jhw2901@frontier.com

Received
4/11/18
MCA

From: State of Idaho WebMaster
To: Comments
Subject: IDL Comment
Date: Monday, April 16, 2018 1:09:17 PM

Name: patty deeks

Contact Phone number: n/a

E-mail address: pd@gmail.com

Mailing address: south hayden lake rd

City: hayden

State: ID

Records Request Description: the people in favor of this second bridge and environmental mistake for the most part do not even live in the state of idaho these same people also own water front property with un permitted docks or out of compliance docks The IDL is unable to police these infractions due to the fact of limited education, most never got past the 12 grade. IDL is embarrassing. No harm intended, just stating the reality of the matter.

16 April, 2018

Steven Fischer
Thirteenth Coast Guard District
915 2nd Ave., Room 3510
Seattle, WA 98174

Email: D13-PF-D13BRIDGES@uscg.mil

U.S. ARMY CORPS OF ENGINEERS	paoteam@nws02.usace.army.mil
IDAHO DEPARTMENT OF WATER RESOURCES	IDWRInfo@idwr.idaho.gov
IDAHO DEPARTMENT OF LANDS	comments@idl.idaho.gov
CITY OF SANDPOINT	
CITY OF PONDERAY	mayor@ponderay.org
BONNER COUNTY COMMISSIONERS	darcey.smith@bonnercountyid.gov
SENATOR SHAWN KEOUGH	skeough@senate.idaho.gov
REPRESENTATIVE HEATHER SCOTT	hscott@house.idaho.gov
REPRESENTATIVE SAGE DIXON	sdixon@house.idaho.gov
LAKES COMMISSION	lakescommission@gmail.com

RE: Public Comment Regarding the BNSF Sandpoint Junction Connector

Dear Steven,

Please accept the following comments for the record and my sincere hope and belief that they are reviewed and valued by the decision makers involved in shaping the final decision and outcome of the proponent for this application. I will try to be succinct in my explanation of my thoughts but in some instances a complex problem will require a longer explanation of my thoughts and suggestions, for this I appreciate your indulgence.

I believe a more robust analysis of the alternatives available for BNSF Sandpoint Junction Connector is needed, if that results in a decision for a full EIS, then I am in support of that. In the Alternative Analysis prepared by Jacobs Engineering starting at page 67 of the application, the only alternatives actually considered practical were for the east or west side of the existing bridge. Two other alternatives were given lip service in the report but by admission in the report were not seriously considered. It would seem that a number of other alternatives should have been considered, among them:

1. Parallel track construction in other parts of the track system from Bonners Ferry to Rathdrum. Logic would explain that any place single line main track exists will cause system bottle necks and delays due to trains needing to pass going different directions. Is the construction of the parallel tracks in the City of Sandpoint and over Lake Pend

Oreille the only place that system efficiency can be gained? I am quite sure that many more miles of parallel tracks could be installed on solid ground compared to building miles of bridges for the same money.

2. How about taking a bigger overall view? Currently two main line tracks are operated by two railroads (BNSF & Union Pacific) between Bonners Ferry, Spokane and points west. Is there a way that coordinated operations (I suspect that track sharing treaties have existed for years between the various operators) of these two main lines that would allow each line to be designated as one way traffic (east/west)? Probably some connector switching and other items of improvement would be required but overall the tracks already are in place and system efficiency would be best served with full parallel tracks. Certainly, if this was cleverly put together, the overall positive impacts of the reduction of train operations at grade crossings in the greater Sandpoint area would be very helpful from both an efficiency and annoyance perspective.

There well maybe other alternatives that should be evaluated, I only make these suggestions as an untrained lay person.

I have several other concerns that for the bridges as proposed regarding the following:

1. The pile driving for the piling envisions over 500,000 strikes on the pilings. No provisions are included for sound attenuation. The proponent is proposing this for occurring over a three year period and that the community should just accept this level of sound invasion.
2. What happens to the pilings that are placed for the temporary work bridge at completion?
3. What is the interim construction and long term impacts on the Dog Beach recreation area between the BNSF Bridge and the Highway 95 Long Bridge at the north end of the two bridges?
4. There has been no discussion in the proposal about the entire rail corridor from Sagle past the Schweitzer Mountain Road and the Sunnyside Road. What improvements could be implemented to the system and grade crossings to improve safety and efficiency and reduce wait times of the public? What is required to allow the grade crossing arms and equipment to operate safely and effectively without the blasting of the train horns?
5. What are the Emergency Preparedness and Response Plans? In the application it notes that a current of water estimated in excess of one knot per hour exists under the proposed bridge. In the unfortunate scenario that the unlikely occurs, do boats, booms, absorbent materials and personnel exist to provide a timely response to prevent widespread harm?

At the end of the day in the name of interstate commerce and the economic good of the train operator and country, BNSF is asking the Sandpoint and Sagle residents to endure a very long uncomfortable construction period and then increased rail traffic without much thought on the impacts to each of our lives or how a major response crisis will be initiated. Consideration needs to be made for these impacts and issues. There are most likely a number of ways that this can be achieved by better consideration of the alternatives and thorough addressing of the individual issues rather than hoping that they just go away or are unmitigated impacts.

Thank you for your time and consideration.

Woody Sherwood,
Sandpoint, Idaho

From: DiPofi, Phil
To: Comments
Subject: Rail Proposal
Date: Thursday, April 26, 2018 9:53:41 AM

The proposed expansion and modifications, if allowed to proceed, would be tragic for Sandpoint. Between the construction, added sound and dust, and the aesthetic degradation - Sandpoint will lose and the rail company the sole beneficiary. What a shame it would be to let this old economy project proceed and change forever the beauty and charm of Sandpoint.

Respectfully,

Phil DiPofi

Sent from my iPhone

From: State of Idaho WebMaster
To: Comments
Subject: IDL Comment
Date: Tuesday, May 01, 2018 4:27:28 PM

Name: Denise Dombrowski

Contact Phone number: 2082635392

E-mail address: denisedyane@gmail.com

Mailing address: denisedyane@gmail.com

City: Sandpoint

State: ID

Records Request Description: As a resident of Bonner County since 2000, rail noise is a challenge. w We are asking the U.S Coast Guard to perform a full E.I.S. before any construction is started. We do not need additional tracks going thru our beautiful Sand Creek/Pend Oreille watershed The water, wildlife, families and everyone will have a difficult time enjoying our area with all this construction. There is really no need for it. We can wait and be patient for trains to take turns going thru the area. Thank you so much for considering this issue. Denise Dombrowski and family

From: Debra Moy
To: Comments
Subject: BNSF Railway Application
Date: Saturday, April 28, 2018 10:23:35 AM

To Whom It May Concern,

Our neighborhood parallels the existing railway. We are so close; we can see the engineers' faces as they pass by. There is noise, vibration, and coal dust lining the Lake Pend Oreille shoreline and filling our rain gutters.

That being said, we realize the new track will come and alleviate the congestion. We think the following would be a good compromise:

1. Cover the coal cars that pass through our town. We can tell the ones heading to Canada. They are the covered cars. This will protect our lake.

2. Choose the west side alternative for the bridge across Lake Pend Oreille and Sand Creek.

That's it. Thank you for listening.

Steve Hein and Debra Moy
402 Sandpoint Avenue, STE 122
Sandpoint, Idaho. 83864

Sent from my iPad

From: Kellee Daugherty
To: Comments
Subject: Possible SPAM BNSF Railway - Lake Pend Oreille
Date: Monday, April 30, 2018 4:34:05 PM

Hello,

I am writing as a business owner and operator in Sandpoint, as well as resident at the Seasons at Sandpoint.

I have significant concerns regarding adding a new bridge over Lake Pend Oreille and increasing the tracks in downtown Sandpoint. My first overall concern is the total number of trains has increased significantly and the speed in which they come through town creates a very significant noise pollution, disruption and even vibration in my home that wakes me from sleep.

If any accidents were to occur they would be devastating to human life, tourism, water safety and wildlife safety care — to all of those who call this area home and live/visit here. In addition, the total number of trains, noise and disruption would just increase with this project and overall needs to be moved to more rural areas where water and population safety is not impaired, at risk, etc.

Thank you.

Kellee Daugherty, President
Daugherty Management & DM Vacations
208.263.1212 ext 102 | 509.981.1469 cell
kellee@dm-vacations.com | www.dm-vacations.com

npa

new progressive alliance

NewProgs.org

May 9, 2018

Subj: Burlington Northern Santa Fe (BNSF) railroad bridge expansion project (USACE Application No. NWW-2007-01202)

The New Progressive Alliance at http://www.newprogs.org/ urges you to reject BNSF's proposal to build three new rail bridges in the Sand Creek/Lake Pend Oreille watershed.

Please consider the following adverse effects:

- Lake Pend Oreille is the biggest fresh water Lake in Idaho. Lake Pend Oreille is Idaho's largest and deepest lake. It is home to threatened bull trout and an entire ecosystem of aquatic life; the lake provides a regional drinking water source and is a major tourism asset. In 2017 alone, four trains derailed in this area near waterways. Just a single fossil fuel train derailment could damage and change Lake Pend Oreille forever.
- Water quality – increased transport of hazardous materials through the watershed and the possibility of derailment into our local waterways threatens water quality.
- Wildlife habitat – filling wetland and nearshore areas of the lake for additional bridge construction damages sensitive wildlife habitat beyond repair. The proposed project is within the range of bull trout and its critical habitat.
- Traffic – increased train traffic flow through at-grade rail crossings may cause more traffic congestion, not less, as proposed by BNSF. Rail traffic is expected to increase to 114 trains per day (from 58 per day now) by 2025.
- Emergency response – increased train traffic flow through at-grade rail crossings may cause emergency response delays.
- Noise – increased train traffic may result in more whistle-related noise pollution at and around rail crossings.
- Economy – increased train traffic may impact local businesses, property values, aesthetics and the tourism industry.

The proposal is to build three new rail bridges in the Sand Creek/Lake Pend Oreille watershed and the record on transportation of fossil fuels is not good. We should not be expanding unsafe fuel transportation with pipelines, trains, and other devices. (See reference 536. For a list of pipeline accidents since 2000 see reference 3296.) There has been a huge expansion in pipelines and dangerous fuel transportation by rail and truck.

For verification see references 7, 8, 11, 13, 18, 19, 24, 31, 47, 55, 57, 62, 138, 154, 165, 214, 304, 310, 319, 331, 335, 337, 338, 341, 381, 383, 384, 395, 427, 447, 457, 487, 501, 508, 510, 512, 530, 536, 538, 539, 543, 548, 549, 566, 567, 568 - 574, 577, 578, 586 - 588, 596 - 598, 605, 606, 640, 721 - 724, 734 - 736, 778 - 780, 784, 849 - 855, 891, 974 - 981, 1081, 1082 - 1093, 1120, 1204 - 1212, 1354, 1389 - 1430, 1564-1565, 1603-1619, 1695-1697, 1734-1737, 1742, 1743, 1775, 1792-1809, 1978-1986, 2155-2175, 2242, 2251, 2320, 2459-2468, 2575-2579, 2812, 2825-2834, 2987-2989, 3175, 3189, 3231, 3284-3315, 3494-3496, 3882-3887, 3916, 3917 of this article "The Environment" located at:
http://www.newprogs.org/the_environment_under_the_democratic_republican_uniparty

The proposed project involving three bridges encourages rail activity with cumulative impacts that affect communities far beyond Sandpoint, Bonner County and North Idaho. The New Progressive Alliance urges you to reject BNSF's proposal to build three new rail bridges in the Sand Creek/Lake Pend Oreille watershed.

Sincerely,

Ed Griffith

New Progressive Alliance

1000 17th Ave. #306

Longview, WA 98632-2358

IDAHO DEPARTMENT OF FISH AND GAME
PANHANDLE REGION
2885 West Kathleen Avenue
Coeur d' Alene, Idaho 83815

C.L. "Butch" Otter/Governor
Virgil Moore/Director

May 14, 2018

Mr. Steven M. Fischer
U.S. Coast Guard District 13
915 2nd Ave, Room 3510
Seattle, WA 98174
D13-PF-D13BRIDGES@uscg.mil

Ms. Amidy Fuson
Idaho Department of Lands
2550 Highway 2 West
Sandpoint, ID 83864
comments@idl.idaho.gov

Mr. Shane Slate
U.S. Army Corps of Engineers
1910 Northwest Blvd, Suite 210
Coeur d'Alene, ID 83814
NWW_BNSF_Pendoreille@usace.army.mil

Dear Agency Representatives:

REFERENCE: Joint Application for Permit NWW-2007-01303, BNSF Sandpoint Junction Connector

This is a follow-up to our letter dated March 28th, 2018. On May 3, Idaho Department of Fish and Game (IDFG) and Burlington Northern Santa Fe (BNSF) staff and project representatives met to gain a better understanding of the status of the permit application and each other's perspectives and concerns. The purpose of this letter is to update and provide clarity on our discussions regarding potential impacts to fish, wildlife, and habitat and mitigation opportunities. It is not the purpose of Idaho Department of Fish and Game to support or oppose this proposal.

After meeting with the project proponents, we wish to amend our comments in the March 28 letter as follows:

1. Mitigation for nearshore impacts has yet to be defined. The amount, 1.26 acres, has been accurately accounted for. The project agent led a meeting on May 8th to address this need with U.S. Fish and Wildlife Service (USFWS), Avista, IDFG, and Trout Unlimited with expectation the parties will work to find common ground on this aspect.
2. Benthic habitat has not been surveyed and therefore impacts are unknown. As an outcome of the meeting, we recommend a basic survey of the lakebed, which would likely suffice in characterizing this habitat and any potential effects from the proposed work.
3. We discussed the Biological Assessment for bull trout. The proportion of bull trout documented migrating through the project area was considered to be minor compared to the total population, as the only observed migrants originate from the East River. East River bull trout are a relatively small population which exhibit a unique life history, and are valuable from a larger population perspective because of that. We also have evidence of bull trout occasionally originating from Lake Pend Oreille tributaries moving downstream past Albeni Falls Dam. There is currently a proposal in place, with a recently completed Corps of Engineers EIS, to provide passage for bull trout at Albeni Falls Dam. Thus, bull trout migrating to Lake Pend Oreille from the Pend Oreille River may also be fish passed over the dam from the proposed Albeni Falls Dam fish passage facility. Effects of the new bridge on fish habitat, and subsequently fish community structure, were also topics of the May 8 meeting. It is our understanding BNSF is committed to working with resource managers and stakeholders to identify and implement measures that will conserve and protect Pend Oreille bull trout.

Furthermore, BNSF representatives provided the following clarifications:

1. Total new, permanent bridges total 1.02 miles, not 2.2. The project map shows 2.2 miles of project area, but only 1.02 miles are actual bridge.
2. Vibratory hammers do not produce underwater noise levels harmful to fish. The use of vibratory hammers obviate the need for noise attenuation, thus we are no longer recommending use of bubble curtains.
3. Bubble curtains would likely create turbidity problems in Sand Creek Slough. As an alternative, work will be completed during low water, to reduce noise impacts when native salmonids are unlikely to be present.
4. Potential contaminant resuspension associated with pile driving and removal is not expected to affect water quality, thus sediment core samples were not required under the draft 401 Water Quality Certification. We defer to the Idaho Department of Environmental Quality's assessment of this risk and their conditioning of the final permit.
5. While adding a second bridge increases capacity and improves operational efficiency, BNSF representatives clarified that markets determine rail traffic regardless of whether or not the second bridge is constructed; thus there would be no increase to spill risk beyond the temporary risk associated with construction equipment working over the water. These temporary risks are addressed in the hazmat and water quality protection plans.

We appreciate BNSF's efforts to improve emergency response effectiveness. One example is a recent update to the booming strategy at the SH-95 Bridge. Added equipment, training, and planning for spill emergencies at the current and proposed bridges is an investment in the community and the Pend Oreille ecosystem. We encourage ongoing improvements to local resources and support for first-responders, regardless of habitat mitigation alternatives.

BNSF has committed to continued discussion with resource agencies and stakeholders, and to reaching an outcome of consensus based mitigation approaches, to address likely effects on Pend Oreille bull trout and other native species. We appreciate this commitment, and provide our commitment to participate constructively to reach mitigation that all parties can agree to.

It is our understanding that final permit conditions will also include measures to prevent introduction of aquatic invasive species and excess turbidity. We appreciate that BNSF expressed a willingness to consider avoiding loss of fishing opportunity for Idaho anglers, and accommodating fish management activities that may be necessary, when determining timing of construction of different segments of the long bridge. We anticipate additional coordination with BNSF to address nearshore mitigation opportunities and appreciate efforts to protect Idaho's valuable public resources.

Sincerely,

Charles E. "Chip" Corsi
Regional Supervisor

CEC:KJS:njk

C: Gary Vecellio, IDFG Idaho Falls
June Bergquist, IDEQ, june.bergquist@deq.idaho.gov
Marshall Williams, USFWS, marshall_williams@fws.gov
Pierre Bordenave, Jacobs Engineering, pierre.bordenave@jacobs.com
eFile M:/

From: State of Idaho WebMaster
To: Comments
Subject: IDL Comment
Date: Tuesday, March 20, 2018 11:17:46 AM

Name: Brenda Spangenberg

Contact Phone number: 2087725676

E-mail address: awarexp@yahoo.com

Mailing address: 924 Dempsey Dr

City: Hayden

State: ID

Records Request Description: I am opposed to the second rail bridge being built over Pend Orielle due to the environmental impacts and safety concerns it would have to this area.

From: State of Idaho WebMaster
To: Comments
Subject: IDL Comment
Date: Tuesday, March 20, 2018 11:13:27 AM

Name: Mario Spangenberg

Contact Phone number: 2087191072

E-mail address: spangy3@yahoo.com

Mailing address: 924 Dempsey Dr

City: Hayden

State: ID

Records Request Description: I wish to express my opposition to the proposed second Rail Bridge over lake Pend Oreille due to potential environmental and safety hazards. Please take this into account during your review of the application. Thanks for listening.

From: State of Idaho WebMaster
To: Comments
Subject: IDL Comment
Date: Tuesday, March 20, 2018 9:47:27 AM

Name: Judy Butler

Contact Phone number: 2082645224

E-mail address: bjudy90@yahoo.com

Mailing address: 140 Monarch View Lane

City: Hope

State: ID

Records Request Description: I am writing to oppose the Sandpoint Junction Connector project and urge yout to do the same. A second track, passing lane for trains should be done over land not water where the damage from a spill would be far greater.

From: State of Idaho WebMaster
To: Comments
Subject: IDL Comment
Date: Tuesday, March 20, 2018 6:29:17 AM

Name: Cindy Rust

Contact Phone number: 2082159200

E-mail address: crust12@gmail.com

Mailing address: 18224 W. Holiday Way

City: Hauser Lake

State: ID

Records Request Description: At the very least, any rail construction over water should contain a wing wall to protect from rail cars detailing or their contents spilling completely in the water body beneath the track. There should also be an emergency management plan in place and tested prior to construction. This plan should include the swiftest methods of securing spills and cleanup to protect shoreline property owners, aquatic flora and fauna, and water quality. Anything less than these two components to a plan for a new rail bridge would be a financial recipe for disaster as the lake's economic value to the area is a key component to the vitality of.the town.

March 24, 2018

May 20, 2018

BNSF PROPOSAL TO BUILD THREE NEW RAIL BRIDGES IN SANDPOINT, IDAHO
404 JOINT APPLICATION
US ARMY CORPS OF ENGINEERS--IDAHO DEPARTMENT OF WATER RESOURCES--
IDAHO DEPARTMENT OF LANDS
USCG

Steven Fischer
Thirteenth Coast Guard District
915 2nd Ave, Room 3510
Seattle, WA 98174
Email: D13-PF-D13BRIDGES@uscg.mil

PEND ORIELLE LAKE SUPERVISORY AREA
TOM FLEER, AREA MANAGER
2550 Highway 2 West
Sandpoint, ID 83864-7305

PUBLIC COMMENT

Chris Turner
8 Cedar Gates Rd
Longview WA 98632
360 270 2914 caturner458@gmail.com

At this point, BNSF has not volunteered enough information about the project and its significant adverse impacts/possible mitigations to make a decision on whether any permits should be issued for this proposal.

BNSF has not demonstrated the need to double-track a small section of track that has a minimal train transit time over Lake Pend Orielle.

So, my answer is NO. No permits should be issued at this time. Obtaining public comment for the proposal by BNSF to double-track and construct three bridges over Lake Pend Orielle is important, and has far-reaching impacts. Unfortunately, the general public or others that write comments are not experts.

In reality, this proposal needs to have a full EIS evaluation with specific studies, an extended study area with analysis of the cumulative impacts that would occur with the increased train traffic. Then, any permitting agency that needs to research environmental impacts, can refer to the FEIS. This also will allow multiple agencies to use the same documents to approve or deny their permits.

There are too many factors that are involved with this proposal to rely on a simple environmental assessment. ACE and CG, to issue permits, normally rely on expert evaluations of the entire proposal. No one expects ACE or CG to be experts and provide the facts on the entire varied aspects of this proposal. Nor, would I want these agencies to ignore impacts that could be mitigated, or possibly issue a permit in error.

Without sufficient information provided by BNSF, this is a list of the "questions" that I would have posed in a scoping public comment, to get the railroad started:

1. ALTERNATIVES.....
   a. Railroad bridge construction design
   b. Bridge building materials
   c. Type of fill materials
   d. Method of dredging/piling installation
   e. Bridge approaches/landings
   f. Current Controlled/uncontrolled/at-grade crossings
   g. Emergency access to avoid congested crossings
   h. Construction windows
   i. Older oil rail cars
   j. Excessive length of trains
   k. Uncovered coal rail cars
   l. Deposits of fugitive coal dust/particles
   m. Application of surfactants on coal train cars
   n. Filling wetlands
   o. To achieve no net loss
   p. Locations to relieve choke points
   q. Potential mitigations
   r. Train noise/horns
   s. Locomotive stationary operations--idling
   t. Current/future pollution of the lake/rivers
   u. Funding to provide increased emergency services, upgrade drossings etc.
   v. Aesthetics/viewing areas
   w. Lighting/glare--permanent/temporary/health effects on aquatic life
   x. Control signals/waiting areas of the trains (maps)
   y. Train speed within City limits
   z. Scope of the study area

2. STUDIES THAT SHOULD BE REQUIRED:
   a. Necessity of double-tracking over the lake--including train traffic statistics, direction of flow, waiting times, lenth of time for bridge transits, max loads etc. Why double-track such an insignificant minor choke point at all?
   b. Map all regional routes to the lake and state whether they are double-tracked etc., train yards etc.
   c. Tribal Rights/Tribal Resources
   d. Large project study area that no only includes the lake and surrounding areas but other regions like Spokane which is significantly affected by increased rail traffic
   e. Traffic impacts, waiting times at each crossing locally/ other affected jurisdictions

STUDIES THAT SHOULD BE REQUIRED (Cont)

f. Emergency access at crossings/impacts on response times
g. In the immediate/other jurisdictions--Evaluate each rail crossing and the possibility of mitigating the adverse impacts by upgrading the crossings or constructing an overpass. Examine funding for such requests
h. Increased rail traffic figures.
i. Current/future length of trains
j. Future cumulative impacts of increased train traffic on other regions
k. Current speed of trains locally/other jurisdictions--predicted speed after double-tracking
l. Status of Positive Train Control in Idaho
m. HIA--Human Health Impacts in nearby neighborhoods related to pollutants, noise, and cancer rates etc.
n. The health effects of lighting/glare from temporary bridge construction and permanent infrastructure on the lake and rivers to aquatic life, especially the Trout
o. Current/future train, vehicle, and pedestrian accident rates related to the railroad
p. Relationship between the Water Treatment/Wastewater treatment plants/pollution in the lake and adjacent rivers, violations exceeding the effluent limits of these plants. Total expected pollution from existing sources, new infrastructure, and operations of railroad trains in the surrounding areas of the lake/rivers In relation to max limits
q. Fugitive coal dust/diesel particulates/toxins, violations of the Clean Water Act relating to the pollution in the Lake and the adjacent rivers Sierra Club vs BNSF
r. Necessity to double-track over the Lake and not in a different location
s. Future length of trains in the large loop, which includes the Columbia River Gorge and Stampeded pass WA
t. Origination of the increased trains, their projected cargoes and destinations
u. Tier 4 lower emission diesel locomotives
v. Train accidents/derailments and their causes/aftermath pollution and cleanups, especially involving the recent derailments, such as Moron Montana, Mosier Or, Amtrak Dupont WA etc. Percentage of increased risk of accidents/spills regarding this project
w. The effects of fugitive coal dust/toxic chemicals on wildlie/aquatic plants and fish etc.
x. Impacts related to endangered/threatened wildlife/aquatic species.
y. Whether the elimination of more choke points is necessary. Two major projects involving train transportation, the Oil Terminal Vancouver WA and the coal terminal at Millennium Longview may never be built.
z. Impacts of the additional bridges/railroad beds in relation to recreation on or near the lake and rivers

STUDIES THAT SHOULD BE REQUIRED (Cont)

aa. The current level of pollution/particular pollutants that are in the Lake and adjoining rivers
bb. Use of puncture resistant oil train cars
cc. Placing tariffs on oil and coal train cars passing through the Cities surrounding the Lake to obtain funds for increased risks to the communities and potential accidental contamination
dd. Visualization of the bridges and railroad beds in relation to the local viewing points
ee. Personnel/equipment necessary to provide adequate first responder mobilization in the case of accidents/derailments
ff. In-water construction mitigations regarding suspended solids and other related disturbances of aquatic life including spawning areas
gg. Spawning locations of the lake and rivers, impacts of year-round construction, permanent alterations and their impacts on the Trout's spawning areas
hh. Cumulative effects of all the bridges on the lake and rivers including lighting effects on the aquatic life
ii. BNSF Safety Record--their history on whistleblower train safety complaints, subsequent firings, and resolutions--Current whistleblower policies
jj. Recent BNSF railroad improvements in the immediate vicinity
kk. Effect on businesses/residential neighborhoods adjacent to the new railroad beds
ll. Future projects/realignments, railroad double-tracking or railroad improvements by BNSF or others in the local area or other regions
mm. Exact suggested mitigations to offset "no net loss" of this project. Mitigation for loss of wetlands
nn. AMTRAK'S anticipated proposed use of the new bridges--increased service etc.
oo. Air quality measurements. The various PM concentrations, surrounding the lake and rivers within a wide study area
pp. Seismic Risks

CONCLUSION

This is a long list of information that BNSF has not attempted to provide to the permitting agencies or to the public at this point.

The damage/destruction to the Lake and surrounding areas, risks, human/aquatic health outweighs the benefits of this project.

A full EIS would be required to explore all of these subjects properly.

HON. JOHN C. COUGHENOUR

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SIERRA CLUB, *et al.*,

Plaintiffs,

v.

BNSF RAILWAY COMPANY,

Defendant.

Case No. 2:13-cv-00967-JCC
(consolidated with No. 2:14-cv-00660)

[PROPOSED] CONSENT DECREE

BEVERIDGE & DIAMOND, P.C.
1350 I St., NW, Suite 700
Washington, D.C. 20005
202-789-6000

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WHEREAS, Plaintiffs Sierra Club, Puget Soundkeeper Alliance, RE Sources for Sustainable Communities, Columbia Riverkeeper, Friends of the Columbia Gorge, Spokane Riverkeeper, and Natural Resources Defense Council (collectively, "Plaintiffs") filed a Complaint in this Court seeking civil penalties, as well as declaratory and injunctive relief, against Defendant BNSF Railway Company ("BNSF" and collectively with Plaintiffs, the "Parties") and others on June 4, 2013, alleging violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.* (the "CWA" or the "Act");

WHEREAS, Plaintiffs filed a separate Complaint in the United States District Court for the Eastern District of Washington similarly alleging that BNSF and others had violated the CWA (assigned Civil No. 2:13-cv-00272 (E.D. Wash.) and hereafter referred to as the "Eastern District Action");

WHEREAS, the Eastern District Action was transferred to this Court and assigned Civil No. 2:14-cv-00660, after which it was consolidated with the above-captioned civil action (ECF No. 84) ("the Litigation");

WHEREAS, subsequent to consolidation, on May 6, 2015, Plaintiffs filed their Third Amended Complaint (ECF No. 113) naming only BNSF as a Defendant;

WHEREAS, prior to filing their initial Complaint, Plaintiffs sent to BNSF and others Notices of Intent to Sue dated April 2, 2013 and May 9, 2013 in which they stated their intent to assert claims for alleged violations of CWA sections 301 and 404, 33 U.S.C. §§ 1311, 1344, and the Rivers and Harbors Act of 1899, 33 U.S.C. § 403, *et seq.*, and further asserted that "[t]he pollutants that the Dischargers have discharged, are discharging, and will continue to discharge include, but are not limited to, coal, coal chunks, coal dust, metabolites or related byproducts of

coal, surfactants applied to the coal, coal chunks and coal dust, petcoke, petcoke chunks, petcoke dust, and suppressants";

WHEREAS, CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the unpermitted discharge of any pollutant to waters of the United States;

WHEREAS, Plaintiffs brought their action against BNSF for alleged CWA violations pursuant to Section 505 of the Act, 33 U.S.C. § 1365;

WHEREAS, BNSF is a Class I railroad operating in 28 states. BNSF transports freight, including a number of commodities, for a wide range of customers. As a Class I railroad, BNSF operates as a common carrier subject to the jurisdiction of the Surface Transportation Board ("STB"). BNSF's status as a common carrier requires the railroad to provide transportation of goods on reasonable request;

WHEREAS, coal and petroleum coke ("petcoke") are among the commodities that BNSF transports for its customers. BNSF transports coal, petcoke, and other commodities in open-top railcars in the State of Washington and several other states;

WHEREAS, Paragraph 48 of Plaintiffs' Third Amended Complaint alleges that "[e]ach and every coal train and each and every rail car carrying coal discharges coal pollutants to waters of the United States when traveling adjacent to, over, and in proximity to waters of the United States." Paragraph 3 of the Third Amended Complaint defines "coal pollutants" to include "coal, coal chunks, coal dust, metabolites or related byproducts of coal, and other substances or materials added to the coal including, but not limited to, surfactants and suppressants, and petroleum coke." The Third Amended Complaint further alleges that BNSF did not obtain any permit to discharge any pollutants from its railcars;

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WHEREAS, BNSF asserted defenses to the allegations contained in the Third Amended Complaint, expressly denies Plaintiffs' allegations in their entirety, and admits no liability by entering this Consent Decree;

WHEREAS, the Parties recognize that this Consent Decree is a settlement of a contested matter;

WHEREAS, the objective of the Parties in entering this Consent Decree is to resolve the Litigation; and

WHEREAS, the Parties acknowledge that this Consent Decree has been negotiated by the Parties in good faith and will avoid further litigation, and the Court, in entering this Consent Decree, finds that this Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, without the admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties,

IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. GENERAL PROVISIONS

1. Jurisdiction and Venue. This Court has jurisdiction over the subject matter of this action and the Parties pursuant to 28 U.S.C. § 1331 and 33 U.S.C. § 1365(a). Venue is proper in this judicial district pursuant to section 505(c) of the Act, 33 U.S.C. § 1365(c), because the Complaint alleges that discharges in violation of the Act occurred in this judicial district. BNSF does not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

2. Retention of Jurisdiction. This Court shall retain jurisdiction for the purposes of issuing such further orders and directions as may be necessary and appropriate for the implementation or

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modification of this Consent Decree, enforcing compliance with, or resolving disputes regarding the provisions of this Consent Decree.

3. Reservation of Rights. The Parties reserve the right to enforce the terms of this Consent Decree and take any action authorized by federal or state law not inconsistent with this Consent Decree.

4. Parties Bound. This Consent Decree shall be binding upon Plaintiffs, BNSF, and their respective officers, agents, servants, employees, successors, and assigns.

5. Counterparts. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

6. DOJ and EPA Review. The Parties recognize that, under 33. U.S.C. § 1365(c)(3), this Consent Decree can be entered only forty-five (45) days after the Attorney General of the United States and the Administrator of the Environmental Protection Agency receive a copy of this proposed Consent Decree. Plaintiffs shall serve copies of the executed Consent Decree upon the Administrator of the United States Environmental Protection Agency, the Attorney General, and the Regional Administrator for EPA Region 10, and Plaintiffs shall provide notice to the Court of the foregoing requirements, as required pursuant to 40 C.F.R. § 135.5.

7. Final Judgment. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final, non-appealable judgment of the Court under Rules 54 and 58 of the Federal Rules of Civil Procedure.

II. CAR COVER STUDY

8. BNSF shall conduct a study to assess the commercial and operational feasibility of car covers for use on open-top coal and petcoke railcars (the "Car Cover Study"). In its sole

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discretion, BNSF may conduct this study in cooperation with various interested stakeholders, including without limitation, the Association of American Railroads, its customers, mine operators located in the Powder River Basin, or others invited by BNSF, to the extent they may agree to participate. It is anticipated that the Car Cover Study will occur over a period of approximately two years following entry of this Consent Decree.

9. BNSF's obligation to conduct the Car Cover Study under Paragraph 8 shall require BNSF to assess only car cover designs for which a functioning prototype is reasonably available to BNSF within six months of the date of entry of this Consent Decree. As part of the first phase of the Car Cover Study, BNSF shall conduct outreach and solicit participation from car cover manufacturers.

10. This Consent Decree shall not be construed to require BNSF to assess any conceptual car cover design or develop any car cover design. As between the Parties, BNSF is exclusively responsible for conducting and overseeing the Car Cover Study, as well as arranging for equipment and personnel.

11. Once during each six-month period (January – June and July – December of each year) until the conclusion of the Car Cover Study, BNSF shall provide to Plaintiffs electronic copies of final versions of all reports, technical specifications of car cover designs, testing results, testing procedures, and testing data created for the Car Cover Study. Prior to receiving any such information pursuant to this Paragraph, each Plaintiff organization shall execute a confidentiality agreement acceptable to all study participants, including without limitation any companies whose covers will be assessed. Plaintiffs acknowledge that BNSF reserves the right to redact cover manufacturer-, customer-, mine- and utility-specific information in any document provided pursuant to this Paragraph, and Plaintiffs agree that the redaction of such information shall not be

a basis for challenging the adequacy of BNSF's compliance with this Paragraph. In the event that Plaintiffs contend that any information redacted by BNSF prevents Plaintiffs from assessing compliance with this Consent Decree, Plaintiffs may invoke the Dispute Resolution provisions in Section VIII to contest the necessity for such redactions.

12. If, in its sole discretion, BNSF determines that any car cover design assessed under Paragraph 8 is commercially and operationally feasible, then BNSF shall undertake good faith efforts to amend the safe harbor provision of BNSF Price List 6041-B (the "Coal Loading Rule") to add such car cover design(s) within 90 days of the conclusion of the car cover study. A decision by the STB concluding that any amendment to the Coal Loading Rule proposed pursuant to this Paragraph is unreasonable or otherwise invalid shall not constitute the basis for any allegation that BNSF has not complied with its obligations under this Decree.

13. For the purpose of Section II, commercial and operational feasibility of a car cover design shall mean that a particular car cover (a) when used during loading and unloading operations, and in transit, poses no unreasonable risk of property damage or of bodily harm to BNSF employees, employees of any shipper for which BNSF transports coal and/or petcoke, employees of any mine, or to the general public; (b) can be physically attached to existing open-top railcars transported by BNSF without unreasonable modification to such railcars, (c) will function properly and as intended throughout all operational conditions encountered by BNSF trains while in-transit, (d) complies with all applicable regulatory requirements and industry equipment and interchange rules, (e) conforms to all applicable BNSF clearance and operational requirements, (f) requires no unreasonable modifications to equipment or processes used in loading or unloading coal and petcoke into or out of railcars, (g) would not be unreasonably expensive to procure, install,

operate, replace, repair, or maintain; and (h) otherwise meets the requirements of the Coal Loading Rule. Notwithstanding any such determination of commercial and operational feasibility by BNSF, mines, shippers, or any other entity providing rail cars cannot be required by BNSF to adopt or accept any specific railcar covers or associated modifications to equipment or loading or unloading processes.

14. In the event that BNSF determines in its sole discretion that there exists one or more car cover design that is commercially and operationally feasible under Section II, BNSF shall present the results of the Car Cover Study at the following rail transportation and coal industry meetings or conferences during the two-year period following the conclusion of the Car Cover Study: American Railway Engineering and Maintenance of Way Association meetings, the National Coal Transportation Association meetings, and the Railroad Environmental Conference. BNSF shall provide Plaintiffs with copies of any materials that BNSF uses to present the results of the Car Cover Study at those events.

III. REMOVAL

15. BNSF shall remove significant accumulations of coal and/or petcoke materials in areas on or adjacent to BNSF's right-of-way at each of the locations identified in Appendix A to this Consent Decree, as identified at trial and in designated deposition testimony. BNSF shall complete this initial removal of accumulations of coal and/or petcoke materials from each of these locations no later than one (1) year from entry of this Consent Decree.

16. Within thirty (30) business days of completion of the removal of coal and/or petcoke material at each site required by Paragraph 15, BNSF shall notify Plaintiffs that the removal is complete. The notification shall include before and after photographs and other documentation

reasonably necessary to demonstrate that BNSF has removed materials consistent with Paragraph 15.

17. BNSF shall conduct follow-up inspections of each area identified in Appendix A two times during the period of this Consent Decree. BNSF will use good faith efforts to conduct the first inspection between 9-12 months after service of the notification required by Paragraph 16, and the second 9-12 months after the preceding inspection, subject to the availability of sufficient track windows, and taking into consideration weather, safety, and other factors that could restrict the time available to conduct an inspection. Within thirty (30) days of each inspection, BNSF shall provide Plaintiffs with a statement as to whether any significant accumulations of coal and/or petcoke materials require removal consistent with Paragraph 16.

18. In the event that BNSF identifies significant accumulations of coal and/or petcoke materials in areas on or adjacent to BNSF's property during either of the two subsequent inspections required by Paragraph 17, BNSF shall remove such materials in the same manner as in Paragraph 15. Within thirty (30) days of completion of any additional removal required by this Paragraph, BNSF shall notify Plaintiffs in writing that this additional removal is complete. The notification shall include photographs or other documentation reasonably necessary to demonstrate that BNSF has complied with its obligations under this Paragraph.

19. BNSF's obligation to remove significant accumulations of coal and/or petcoke material under Paragraphs 15 and 18 shall be limited to material on land. BNSF is only required to use non-invasive methods or techniques (e.g., vacuuming) to conduct the removal, and the means and methods to conduct the removal required under Section III are within BNSF's sole discretion. In no event shall BNSF be required under this Consent Decree to conduct any removal activities in

any waterway, including any water of the United States, or conduct any ballast or track maintenance activities to remove materials from BNSF track, nor shall BNSF be obligated to remove non-significant accumulations or scattered, individual pieces or fragments of coal and/or petcoke material. BNSF shall not be required through this Consent Decree to remove coal and/or petcoke materials under Paragraphs 15 or 18 from any property in the event that any property owner declines to allow BNSF or its contractors access to their property under reasonable conditions.

20. In the event that Plaintiffs disagree with any determination that (a) BNSF has completed removal of significant accumulations of coal and/or petcoke material at any location under Paragraphs 15 and 18, (b) any subsequent inspection pursuant to Paragraph 17 identified no new and significant accumulations of coal and/or petcoke material that require removal, or (c) BNSF has completed any subsequent removal of significant accumulations of coal and/or petcoke material required under Paragraph 18, Plaintiffs may invoke the Dispute Resolution procedures in Section VIII.

IV. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

21. Within 30 days of the date this Consent Decree is approved by the Court, BNSF shall pay $1,000,000 to The Rose Foundation for Communities and the Environment for projects to improve water quality or habitat in the State of Washington (and, to the extent they may improve habitat or water quality of the Columbia River, in the State of Oregon). *See* Attachment 1 (Letter from Rose Foundation). Such payment shall be made by check payable and mailed to The Rose Foundation for Communities and the Environment, Attention: Tim Little, 1970 Broadway, Suite 600, Oakland, California 94612, and shall bear the notation "Sierra Club, et al. v. BNSF Railway Co.,

Clean Water Act Settlement," with a copy provided to Plaintiffs at the time payment is made.

V. RELEASE AND CONVENANT NOT TO SUE

22. Plaintiffs release BNSF for all claims that were or could have been brought in this litigation.

23. Plaintiffs covenant not to sue BNSF systemwide under the Clean Water Act or analogous state law or any common law theory on the theory of material leaving open-top rail cars and entering waters of the United States or waters of any state for any events or occurrences arising over the next five years.

24. Any information provided by BNSF to Plaintiffs pursuant to this Consent Decree shall not be admissible in any proceeding against BNSF or any entity that meaningfully participates in the Car Cover Study (as that term is defined in Section II). Notwithstanding the previous sentence, information provided by BNSF to Plaintiffs pursuant to this Consent Decree may be used in proceedings to enforce the terms of this Decree.

25. If the Consent Decree is terminated prior to five (5) years from the date of entry of the Consent Decree, the provisions of Paragraphs 23 and 24 shall survive for the remainder of the five (5) year term of the covenant not to sue.

26. The Parties agree that, as of the date of the entry of this Consent Decree, litigation is not "reasonably foreseeable" concerning the matters described in the Third Amended Complaint. To the extent that any Party previously implemented a litigation hold to preserve documents or electronically stored information related to the Litigation, the Party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves any Party of any other obligations imposed by this Consent Decree or of the obligation to implement a litigation hold

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

September 26, 2017

Millennium Bulk Terminals-Longview, LLC
ATTN: Ms. Kristin Gaines
4029 Industrial Way
Longview, WA 98632

RE: Section 401 Water Quality Certification Denial (Order No. 15417) for Corps Public Notice No. **2010-1225** Millennium Bulk Terminals-Longview, LLC Coal Export Terminal – Columbia River at River Mile 63, near Longview, Cowlitz County, Washington

Dear Ms. Gaines:

The Washington State Department of Ecology (Ecology) has reached a decision on the Millennium Bulk Terminals-Longview request for a Section 401 Water Quality Certification for the proposed coal export terminal near Longview. After careful evaluation of the application and the final State Environmental Policy Act environmental impact statement, Ecology is denying the Section 401 Water Quality Certification with prejudice.

The attached Order describes the specific considerations and determinations made by Ecology in support of this decision to deny the Certification with prejudice. Your right to appeal this decision is described in the enclosed denial Order.

Sincerely,

Maia D. Bellon
Director

Enclosure

By certified mail [91 7199 9991 7034 8935 6995]

cc: Muffy Walker, U.S. Army Corps of Engineers
Danette Guy, U.S. Army Corps of Engineers
Glenn Grette, Grette Associates, LLC

(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(ii) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage;

(v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The department recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(d) The department shall ensure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations.

A. Significant Unavoidable Adverse Impacts

1. Air Quality. The FEIS found a significant increase in cancer risk for areas along rail lines and around the Project site in Cowlitz County where diesel emissions primarily from trains would increase. The study found that residents in some areas in Cowlitz County, including those living in portions of the Highlands neighborhood, would experience an increase in cancer risk rate up to 30 cancers per million. These levels of increased risk exceed the approvability criteria in WAC 173-460-090 for new sources that emit toxic air pollutants. Although WAC 173-460 only applies to stationary sources, the health risks from mobile sources in this case, primarily locomotives, would be considered significant using the same approvability criteria. Thus, the FEIS concluded the emission of diesel particulate primarily from train locomotives would be a significant unavoidable adverse impact. As the FEIS explained, this impact could be mitigated, but not eliminated, by use of cleaner burning Tier 4 locomotives. However, use of such locomotives is outside the control of Millennium and may not

occur for decades because use of older locomotives is currently allowed under federal law. Other mitigation measures identified in the FEIS related to air quality, such as use of best management practices and compliance with permits, would not reduce diesel emissions from Project related locomotives.

The increased cancer risk associated with the Project is a significant adverse unmitigated impact that is inconsistent with the following substantive SEPA policies in WAC 173-82-110:

- Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.
- Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings.
- Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.

2. **Vehicle Transportation.** The FEIS found that there would be significant unavoidable adverse impacts to vehicle traffic from the proposed action when the Project reaches full operation in 2028 due to vehicle delays caused by increased train traffic that would block rail crossings in Cowlitz County. With current track infrastructure on the Reynolds Lead and BNSF Railway (BNSF) spur, Project-related trains in 2028 would increase the total gate downtime by over 130 minutes during an average day at the six crossings listed below. Project-related trains would cause these crossings to operate at Level of Service E or F[1] if one Project-related train traveled during peak traffic hours through the following crossings:

- Project area access opposite 38th Avenue
- Weyerhaeuser access opposite Washington Way
- Industrial Way
- Oregon Way
- California Way
- 3rd Avenue

[1] "Level of Service" is a report card rating based on the delay experienced by vehicles at an intersection or railroad crossing. Level of Service A, B, and C indicate conditions where traffic moves without substantial delays. Level of Service D and E represent progressively worse operating conditions. Level of Service F represents conditions where average vehicle delay has become excessive and demand has exceeded capacity.

Millennium and BNSF may make track improvements to the Reynolds Lead and BNSF spur that would allow trains to travel faster through these intersections and thereby reduce gate downtimes. However, even with these planned track improvements to the Reynolds Lead and BNSF Spur, the Project at full build out in 2028 would still adversely impact and add delays at four crossings, and cause the following crossings to operate at Level of Service E or F if two proposed Project-related trains traveled through them during peak traffic hours:

- Project area access opposite 38th Ave
- Weyerhaeuser access opposite Washington Way
- 3rd Avenue
- Dike Road

On the BNSF main line in Cowlitz County, the increased Project-related trains at full build out in 2028 could adversely impact vehicle transportation at two crossings during peak traffic hours. The following crossings would operate Level of Service E if two Project-related trains travel during the peak hours:

- Mill Street
- South River Road

Delay of emergency vehicles at rail crossing would also increase because of additional Project-related trains.

As described in the FEIS, Millennium has agreed or may be required to implement several mitigation measures to address these impacts. These measures include funding crossing gates at the intersection of Industrial Way, holding safety review meetings, and notifying agencies about increases in operations on the Reynolds Lead. However, these measures will not reduce or eliminate the vehicle delays identified in the FEIS. Vehicle delays could be reduced by further improvements to rail and road infrastructure, however, it is currently unknown when or if such improvements would occur. Therefore, when the Millennium Project is at full operation in 2028, unavoidable and significant adverse impacts would occur on vehicle transportation at certain crossings in Cowlitz County including delays of emergency vehicles. This impact is inconsistent with the following substantive SEPA policies:

- Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings.
- Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.
- Maintain, wherever possible, an environment which supports diversity and variety of individual choice.

- Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities.

3. Noise and Vibration. The FEIS found that there would be significant unavoidable adverse impacts to residences near four public at-grade crossings along the Reynolds Lead and BNSF spur from train-related noise. Train-related noise levels would increase from train operations and locomotive horn sounding intended for public safety.

Residences near the at-grade crossings at 3rd Avenue, California Way, Oregon Way, and Industrial Way would experience increased daily noise levels that would exceed applicable noise criteria per Federal Transportation Administration/Federal Rail Administration guidance.

Approximately 229 residences would be exposed to moderate noise impacts, and approximately 60 residences would be exposed to severe noise impacts. Although these impacts would be reduced near the Industrial Way and Oregon Way crossings if a grade-separated intersection is constructed there as currently proposed, the proposal has not yet received permits and its completion date is unknown.

As described in the FEIS, Millennium has agreed or may be required to implement several mitigation measures to address these train-related noise impacts. These measures include funding two "quiet crossings" at Oregon Way and Industrial Way grade crossings by installing crossing gates, barricades, and additional electronics. This proposed "quiet crossing" is not the same as a Quiet Zone, which requires the approval of the Federal Railroad Administration. The reduction of noise pollution from the proposed "quiet crossing" is unknown because Millennium trains may still be required to sound their horns at the intersections. Other measures include requiring Millennium to work with the City of Longview, Cowlitz County, Longview Switching Company, the affected community, and other applicable parties to apply for and implement a Quiet Zone that would include the 3rd Avenue and California Avenue crossings. However, as a Quiet Zone requires the approval of the Federal Railroad Administration, it is beyond the control of Millennium and it is unknown if it will ever be implemented. Consequently, Quiet Zones are not considered an applicable mitigation measure.

The FEIS states that, if the Quiet Zone is not implemented, Millennium would fund a sound-reduction study to identify ways to mitigate the moderate and severe impacts from train noise. However, it is unknown who would fund, implement, and maintain recommendations to mitigate moderate and severe noise impacts identified in the sound noise reduction study. The study itself does not mitigate the impacts. The Project's significant adverse impacts from noise are inconsistent with the following substantive SEPA policies:

- Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.

- Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings.
- Maintain, wherever possible, an environment which supports diversity and variety of individual choice.
- Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.

4. **Social and Community Resources.** The FEIS found that social and community resources would be significantly and adversely impacted by increased noise, vehicle delays, and air pollution. Impacts from the construction and operation of the Project would impact minority and low-income populations by causing disproportionately high and adverse effects. Impacts from noise, vehicle delay, and diesel particulate matter inhalation risk would affect the Highlands neighborhood, a minority and low-income neighborhood adjacent to the Reynolds Lead in Longview, Washington.

a. Adverse Health Impact from Increased Cancer Risk Rate: Project-related trains and other operations would increase diesel particulate pollution along the Reynolds Lead, BNSF Spur, and BNSF mainline in Cowlitz County at levels that would result in increased cancer risk rates. The modeled cancer risk rate in the FEIS found a majority of the Highlands neighborhood would experience an increased cancer risk rate, varying from 3% to 10%. Use of Tier 4 locomotives, which produce less diesel pollution, by BNSF would reduce but not eliminate diesel particulate matter emissions and the associated potential cancer risk in the Highlands neighborhood. However, requiring Tier 4 locomotives is outside the control of Millennium and may not occur for decades. Therefore, the Project's disproportionately high adverse effects related to increased cancer risk rates from diesel particulate matter inhalation on minority and low-income populations would be unavoidable.

b. Adverse Noise Impact: The Project would add 16 trains per day on the Reynolds Lead and increase average daily noise levels, which would exceed applicable criteria for noise impacts and cause moderate to severe impact to 289 residences in the Highlands neighborhood. Approval, funding, and construction of Quiet Zones for four highway and rail intersections would reduce noise levels. However, there is no sponsor(s) identified to apply for, fund, and maintain Quiet Zones that would reduce noise levels at the four rail crossings. Quiet Zones are outside the control of Millennium and require approval from the Federal Railroad Administration. Therefore, Project-related trains would cause significant adverse unavoidable impacts to portions of the Highlands neighborhood and cause a disproportionately high adverse effect on minority and low-income populations.

c. Adverse Vehicle Traffic Impact: Project-related trains would increase vehicle delays at highway and rail intersections within the Highlands

neighborhood. With the current track infrastructure on the Reynolds Lead, a Millennium-related train traveling during the peak traffic hours would result in a vehicle-delay impact at four public at-grade crossings in or near the Highlands neighborhood by 2028. This would constitute a disproportionately high adverse effect on minority and low-income populations. If planned improvements to the Reynolds Lead are made, the adverse impacts related to vehicle delay could be reduced but not eliminated. However, rail improvements have not received permits and their completion is unknown. Therefore, Millennium's disproportionately high adverse effects to vehicle traffic on minority and low-income populations would be unavoidable.

5. **Rail Transportation.** The FEIS found that the Project would cause significant adverse effects on rail transportation that cannot be mitigated. At full build out of the Project, 16 trains a day (8 loaded and 8 empty) would be added to existing rail traffic. Three segments on the BNSF main line routes in Washington (Idaho/Washington State Line–Spokane, Spokane–Pasco, and Pasco–Vancouver) are projected to exceed capacity with the current projected baseline rail traffic in 2028. Adding the 16 additional Millennium-related trains would contribute to these three segments exceeding capacity by 2028, based on the analysis in the FEIS and assuming existing infrastructure. As described in the FEIS, Millennium would mitigate some of the impacts by notifying BNSF and Union Pacific (UP) about upcoming increases in operations at the Millennium site. This proposed mitigation measure is informational and does not commit BNSF or UP to take action to increase capacity.

BNSF and UP could make necessary investments or operating changes to accommodate the rail traffic growth, but it is unknown when these actions would be taken or permitted. Improving rail infrastructure is outside the control of Millennium and cannot be guaranteed. Under current conditions Millennium-related trains would contribute to these capacity exceedances at three rail segments on the main line and could result in an unavoidable and significant adverse impact on rail transportation, including delays and congestion.

This impact is inconsistent with the following substantive SEPA policies:

- Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.
- Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings.
- Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.

6. Rail Safety. The FEIS found that Millennium-related trains would increase the train accident rate by 22 percent along the rail routes in Cowlitz County and Washington. As described in the FEIS, Millennium would notify BNSF and UP about upcoming increases in operations at the Millennium site. However, this notification measure does not commit BNSF or UP to take action or make changes that would reduce accident rates.

To reduce some of the impacts to rail safety, the Longview Switching Yard, BNSF, and UP could improve rail safety through investments or operational changes, but it is unknown when or whether those actions would be taken or permitted. Improving rail infrastructure to increase rail safety is outside the control of Millennium and cannot be guaranteed. Therefore, the 22 percent increase to the rail accident rate over baseline conditions attributable to Millennium would result in unavoidable and significant adverse impacts on rail safety.

This impact is inconsistent with the following substantive SEPA policies:

- Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.
- Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings.
- Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.

7. Vessel Transportation. The FEIS found that the Project would have significant adverse effects on vessel transportation that cannot be mitigated. Millennium would add 1,680 ship transits to the current 4,440 ship transits on the Columbia River per year, for a total of 6,120 at full build out. Thus, the Project would be responsible for over one quarter of the traffic in the Columbia River.

Based on marine accident transportation modeling, the FEIS found the increased vessel traffic would increase the frequency of incidents such as collisions, groundings, and fires by approximately 2.8 incidents per year. While the chance that an incident would result in serious damage or spill is low, if a spill were to happen, the impacts to the environment and people would be significant and unavoidable.

An increase in vessels calling at the proposed new docks increases the risk of vessel-related emergencies, such as fire or vessel allision. An increase in vessels calling at the new docks also increases risk of spills from refueling ships at berth, although Millennium has stated there would be no refueling at the new docks. The FEIS proposes a mitigation measure that if refueling at the docks were to start, the company would notify Cowlitz County and Ecology. Another mitigation measure in the FEIS involves Millennium's attending at least one Lower Columbia Harbor Safety Committee meeting per year.

As a result, the nearshore areas around the lake, and the lake's water quality, are experiencing environmental pressures from increased human activities and residential development.

Pend Oreille Lake has been designated as a Special Resource Water under Idaho's Water Quality Standards. This designation stipulates that no new point source discharges are allowed, nor may existing sources increase discharges of pollutants to the lake, a tributary, or an upstream segment if these discharges would compromise water quality necessary to designated uses of the water body. Pend Oreille Lake is home to bull trout, a species listed under the federal Endangered Species Act, and has designated uses listed in Idaho Code including: cold-water biota, salmonid spawning, recreation, water supply, wildlife habitat, and aesthetics.

Approximately 90 percent of the flow and 80 percent of the loading of total phosphorus into Pend Oreille Lake comes from Montana's Clark Fork River. Studies have shown that the Clark Fork is the predominate influence on the water quality of lake's deep open waters, while the nearshore, shallow areas of the lake are predominately influenced by sources located within one mile of the lake's shoreline. (TSWQC 2001). To address nutrient loading to the lake's open waters from the Clark Fork, a nutrient loading target for phosphorus[1] has been set at the Montana/Idaho border. This target was officially adopted by the two states and TSWQC in 2002 and provides the basis for a coordinated interstate management approach by apportioning responsibilities between the two states for future water quality planning and implementation activities to protect the lake's open waters. It was agreed in order to complement the protection afforded by the border agreement that a TMDL program would be implemented in Idaho to reduce impacts from local nutrient sources affecting the lake's shallow nearshore areas.

The Pend Oreille Lake Nearshore TMDL focuses on waters in the lake less than 16 meters (~50 feet) in depth. The nearshore load allocation in the TMDL focuses on areas draining directly to the lake without first flowing into a major tributary. To address pollutant loads from other portions of the drainage, there are a number of other TMDLs currently existing or in development. The Pend Oreille basin in Idaho is composed of four different 4th field hydrologic cataloging units, or HUCs. They are the Lower Clark Fork River HUC, Pend Oreille Lake HUC, Priest River HUC and the Pend Oreille River HUC. Some TMDLs have been completed and approved in the Pend Oreille Lake and Priest River HUCs. In the Pend Oreille Lake sub-basin, in addition to the lake nearshore TMDL, there are sediment TMDLs for Gold Creek, Cocolalla Creek, Hoodoo Creek and the Pack River and its tributaries. Cocolalla Lake also has TMDLs for nutrients and dissolved oxygen. Additional TMDLs will be necessary for remaining and newly listed waters in the Priest River and Pend Oreille Lake HUCs. Sub-basin assessments and TMDLs are currently being developed for the Lower Clark Fork River and Pend Oreille River.

[1] The Montana/Idaho border nutrient loading target is 259,500 kg/yr total phosphorus from Montana (Clark Fork River) and 69,151 kg/yr total phosphorus from the Pend Oreille Lake watershed in Idaho. A ratio of 15:1 total nitrogen to total phosphorus was also set as a desirable lower limit to avoid the occurrence of algal blooms in the lake.

Pend Oreille Lake Nearshore Nutrient TMDL Implementation Plan

A Nutrient Management Plan

Pend Oreille Lake
Bonner County, Idaho

December 2004

Prepared in cooperation with:

Idaho Department of Environmental Quality
Tri-State Water Quality Council
Idaho Soil Conservation Commission
Idaho Department of Lands
Idaho Transportation Department
Bonner Soil and Water Conservation District
Bonner County

1.0 EXECUTIVE SUMMARY

The Clark Fork-Pend Oreille Basin lies in western Montana, northern Idaho, and northeastern Washington. The Clark Fork River begins near Butte and drains an extensive area of western Montana before entering Idaho's Pend Oreille Lake. The lake is the source of the Pend Oreille River in northeastern Washington, which ultimately drains to the Columbia River.

In 1994, the State of Idaho designated Pend Oreille Lake as "threatened" due to the increasing amount of nutrients (nitrogen and phosphorus) and resulting algae growth in the lake. Because of this designation, the Idaho Department of Environmental Quality (IDEQ) prepared a problem assessment on the lake in 1999. The assessment concluded that the lake's nearshore waters would likely degrade over the long-term and that a plan should be developed to assure protection of the lake's water quality. The assessment recommended development of a Total Maximum Daily Load (TMDL) to control phosphorus (the nutrient of concern) in order to protect and maintain water quality standards in the nearshore waters of the lake.

During 2001-2002, a technical team of agencies and stakeholders developed the nearshore TMDL. The focus of the TMDL is on the lake's nearshore zone—the band of water along the shoreline where light can penetrate to the bottom and that averages around 50 feet in depth. The dominant factor affecting water quality in this shallow nearshore zone is loading from human activities in the areas immediately surrounding and draining into the lake. The TMDL sets a threshold for total phosphorus (9 ug/l average throughout the nearshore waters and 12 ug/l as an instantaneous "action level") and identifies the total allowable load (4,588 pounds of total phosphorus per season, June through September) that the lake can assimilate while continuing to meet water quality standards. The TMDL was approved by the U.S. Environmental Protection Agency (EPA) in October 2002, and then work began on development of an implementation plan to prescribe specific management actions to reduce nutrient loading from the lake's nearshore drainage area.

A TMDL provides the scientific foundation for protection of a waterbody by setting thresholds, or targets, for the pollutant(s) of concern. An implementation plan puts a TMDL into practice by identifying and implementing specific pollution control measures designed to achieve the targets outlined in the TMDL. As required by IDEQ, an implementation plan also describes when pollution control actions will take place, designates responsible parties, estimates costs and potential funding opportunities, and sets up a plan for monitoring, evaluation, maintenance of effort over time, and public involvement.

Recognizing that an implementation planning effort is more likely to be successful when a collaborative community approach is taken, IDEQ enlisted the assistance of the Tri-State Water Quality Council (TSWQC), a diverse stakeholder group, to help develop the Pend Oreille Lake nearshore TMDL implementation plan. Working with the IDEQ, the TSWQC organized and facilitated the efforts of the Pend Oreille Lake Planning Team. Members of the planning team included representatives from IDEQ, TSWQC, Idaho Soil Conservation Commission, Natural Resources Conservation Service, Idaho Transportation Department, Idaho Department of Lands, Bonner County Planning Department, Kootenai-Ponderay Sewer District, U. S. Army Corps of Engineers and interested citizens.

From fall 2002 through spring 2004, the planning team researched nutrient pollution problems, compiled existing pollution control programs, and developed management actions and potential opportunities for improving the water quality of Pend Oreille Lake and its watershed. The team met with agencies responsible for, or participating in, key existing water pollution control programs, including IDEQ, Bonner County Planning Department, Bonner County Public Works Department, Idaho Transportation Department, Idaho Department of Lands, U. S. Forest Service, Panhandle Health District, City of Sandpoint, Bonner Soil & Water Conservation District, Selkirk Cooperative Weed Management Area and U. S. Coast Guard Auxiliary. The team also held a public workshop in October 2003 to gather ideas from the public about actions that could be taken to protect the lake's nearshore water quality from nutrient pollution. From this variety of sources, the team then assembled management actions that could serve to protect lake water quality by enhancing or expanding upon existing programs, with a focus on activities that take place in the immediate nearshore drainage area. The resulting list of actions is the focal point of the implementation plan.

A total of 82 recommended actions fall into two program areas: **education** projects and **on-the-ground implementation** projects. The planning team considers education to be one of the most effective methods for meeting the goals of the TMDL. Through education, informed watershed residents and lake users will be more conscious of how their activities affect the lake, and thus may be more willing to modify those activities to meet water quality goals that they understand. However, on-the-ground pollution control measures are also essential for achieving the goals of the TMDL, because these actions can directly prevent or reduce the amount of phosphorus loading into the lake.

Categories for the on-the-ground actions include: development/shoreline property, stormwater, transportation/roads, forestry, agriculture, Eurasian milfoil and recreation, along with program coordination and water quality monitoring and data management. The recommended actions include a spectrum of activities that ranges from protecting and maintaining natural vegetation along shorelines, developing land disturbance and grading permit requirements, investigating increased setbacks for new waterfront lots, identifying and implementing beneficial roadway projects in water quality problem areas, encouraging landowner participation in federal and state forestry and agriculture cost share programs, and pursuing creative opportunities for revenues to fund the control of Eurasian milfoil. For each recommended action, the plan identifies lead agencies, estimated costs, anticipated implementation dates, and possible funding sources.

Dates for the recommended actions are set for the first five years of the implementation plan. Monitoring of the lake will be undertaken annually to determine the effectiveness of these initial actions. Based on monitoring and evaluation results at the end of the first five-year period—and subsequent five-year periods thereafter—management actions to reduce nutrient loading from local sources will be revised or developed as needed to meet the nutrient targets in the TMDL. The implementation plan is designed with an adaptive management strategy in mind. IDEQ recognizes that the implementation plan must allow for change over time as new scientific information becomes available, the lake's watershed population increases, new laws and ordinances are enacted, new projects are identified, and existing projects are implemented.

The plan outlines a water quality monitoring program to be undertaken to evaluate if the TMDL targets are being met and to assess overall project effectiveness. Monitoring data will also be used to strengthen the overall understanding of nearshore water quality in Pend Oreille Lake.

The monitoring program includes recommended actions to be taken by resource managers in the event of exceedances of the 12 ug/l action target. This includes either an instantaneous exceedance (exceedance of the target at any one time at a location) or a short-term exceedance (exceedance of the target for two consecutive years in the same location.)

In accordance with Idaho Code, the implementation plan confirms commitment from the lead agencies to devote the necessary resources to meet the targets of the TMDL. IDEQ will meet annually with the designated lead agencies and other resource managers and stakeholder groups to review the monitoring results and to determine the progress of individual projects and the implementation plan as a whole. These annual meetings will also ensure that projects are being monitored and that all agencies are held accountable for their respective projects. Additionally, each year IDEQ will hold a public meeting to provide updates and seek local community input on the implementation plan. IDEQ will prepare an annual implementation plan progress report for distribution at each annual public meeting.

2.0 INTRODUCTION

The Pend Oreille Lake nearshore Total Maximum Daily Load (TMDL) was submitted by the Idaho Department of Environmental Quality (IDEQ) and approved by the U.S. Environmental Protection Agency (EPA) in 2002. IDEQ has set a target date of 18 months after EPA approval of a TMDL to develop and approve a TMDL implementation plan. IDEQ is keenly aware that collaborative efforts on many fronts are required in order to meet the 18-month implementation plan completion date, to meet water quality targets established in the nearshore TMDL, and to attain full beneficial uses at the earliest possible date. For this reason, the IDEQ applied for an EPA grant to fund the Tri-State Water Quality Council (TSWQC), a diverse stakeholder group, to help develop and implement the Pend Oreille Lake nearshore TMDL and associated implementation plan.

Working with the IDEQ, the TSWQC facilitated the efforts of the Pend Oreille Lake planning team. From fall 2002 through spring 2004, the group researched pollution problems and existing water quality protection programs and developed management actions and potential opportunities for improving the water quality of Pend Oreille Lake and its watershed. The result of the 18-month collaborative effort is this implementation plan.

2.1 OVERVIEW OF THE PEND OREILLE LAKE WATERSHED

The Pend Oreille Lake watershed is part of the larger Clark Fork – Pend Oreille Basin which encompasses about 25,000 square miles in western Montana, northern Idaho, and northeastern Washington (Figure 1. Clark Fork – Pend Oreille watershed boundary). Located almost entirely in Bonner County, Pend Oreille Lake is the largest and deepest natural lake in Idaho. The surface area of the lake is approximately 143 square miles (95,000 acres) with about 175 miles of shoreline (Figure 2). The Clark Fork River is the principal tributary to the lake, contributing about 92 percent of the annual inflow (Frenzel, 1991a, as sited in DEQ 2002). Other tributaries to the lake include the Pack River, Lightning Creek, and Sand Creek with numerous smaller streams entering the lake at various locations. Surface water outflow from the lake consists only of the Pend Oreille River, and groundwater contributions from the lake to the Spokane Valley-Rathdrum Prairie Aquifer have been estimated between 3.8 and 7 percent of the total aquifer recharge (IDEQ, 2002).

The lake is most often divided into two hydrologic basins comprising the deep and relatively poorly-flushed southern basin and the relatively well-flushed, shallow northern basin. The deep southern basin contains approximately 95 percent of the overall lake volume. The pelagic zone (deep – open waters) accounts for approximately 89 percent of the lake's volume while the littoral zone (shallow nearshore areas and the focus of this TMDL implementation plan) accounts for approximately 11 percent (EPA 1993, as cited in IDEQ 2002).

The lake's watershed supports a natural resource based economy with an array of land use types. Recreation constitutes an important business for the entire lake community and the Pend Oreille Lake region continues to increase in popularity as a recreational destination. With 14 species of fish, the lake has a well-deserved reputation as a fishermen's paradise (a total estimated 465,000 hours per year is spent by anglers fishing the lake) and opportunities for a variety of water-related recreational activities abound. With a population rate in Bonner County currently at 38 percent, development in the lake's watershed—and use of the lake—is increasing significantly.

Energy (/News/Topic/Energy/) | Transportation (/Home/Topic/Transportation/) | Environment (/News/Topic/Environment/)

Railroad Whistleblower In Seattle Wins $1.6M Settlement

by **Ashley Ahearn** (/contributor/ashley-ahearn/) Follow and **Tony Schick** (/contributor/tony-schick/) Follow EarthFix May 27, 2016 4:30 p.m. | Updated: May 28, 2016 12:01 p.m.

A federal jury in Seattle has awarded a former BNSF Railway worker, and whistleblower, more than $1.6 million.

In 2010, Curtis Rookaird alerted federal officials that his employer had told him to forego an important brake test on a train carrying oil and hazardous materials. He was later fired.

Rookaird's case came amidst heightened scrutiny for railroads (http://www.opb.org/news/article/workers-question-safety-culture-in-railroads-hauli/) as they began moving unprecedented amounts of crude oil throughout the country, including several trainloads per week to marine terminals and refineries in the Pacific Northwest.

The circumstances of his firing illustrate a trend within the railroad industry of retaliation for reporting safety concerns and injury reporting, according to current and former railroad workers, labor attorneys and railroad safety consultants.

RELATED COVERAGE

It's been six years since BNSF Railway fired Curtis Rookaird.

The Rookairds lost their home as a result. Curtis left to drive a truck in the oil fields of North Dakota to support his wife, Kelly, and their two boys.

(/news/article/workers-question-safety-culture-in-railroads-hauli/)

Rail Workers Raise Doubts About Safety Culture As Oil Trains Roll On (/news/article/workers-question-safety-culture-in-railroads-hauli/)

"We were down to the last few dollars and I went to ND to go to work in 2012," Rookaird said.

"On borrowed money," Kelly Rookaird added.

"We borrowed money for me to get there," Curtis said. "So, it's been a struggle."

But in court this week, the Rookairds were victorious. The judge ruled Curtis Rookaird was right to conduct that brake test over the objections of his supervisor and was wrongfully fired.

The jury described BNSF Railway's conduct was "malicious and oppressive," and awarded Rookaird to make up for his lost earnings and emotional stress.

Several others have won large sums from BNSF Railway for similar cases.

Mike Elliot, a former union safety official who worked for BNSF, was awarded $1.25 million last year after being fired for reporting unsafe track conditions north of Tacoma. Jen Wallis, a BNSF rail yard worker in Seattle, also won in court after she injured her knee on the job and said she was penalized by the railroad for reporting the injury.

It is not the first time a judge has ruled in Rookaird's favor. The court ruling follows an administrative law judge ruling in 2013 from the Occupational Safety and Health Administration, which handles railroad whistleblower claims.

BNSF maintains Rookaird was fired justifiably and that it was not retaliation, spokesman Gus Melonas said in an emailed statement. The company has repeatedly pointed to the ruling of an arbitration panel that found Rookaird's firing was justified.

"There was important information that was not presented to the jury," Melonas wrote. "We are weighing our options as we study the jury's decision."

BNSF could appeal Rookaird's case all the way to the U.S. supreme court.

Science, Tech & Environment

Ex-employees claim a major US freight railroad company has ignored key safety checks

Living on Earth

July 21, 2014 · 5:00 PM EDT

By Ashley Ahearn

Listen to the story.

A BNSF train carrying crude oil from the Bakken Shale in North Dakota

Credit: BNSF file photo

One of the largest freight railroad companies in North America, Burlington Northern Santa Fe (BNSF) Railway, is accused of forcing workers to skip critical safety checks and firing employees who blow the whistle on unsafe practices.

A former BNSF employee named Curtis Rookaird, a conductor for the railway for six years, says he was fired in 2010 for insisting that he perform certain safety checks over the objections of his supervisor.

"I was just doing my job, like I was trained to do, that day," Rookaird says. "I didn't know I was going to be in such a battle — and it's a battle for my life, for my family ... not just for my job."

On February 23, 2010, Rookaird went to the rail yard in Blaine, Washington, ready to start lining up train cars and doing safety checks. One of the most important checks is called an air test: a conductor or brakeman walks the length of a train to see if the air brakes on each car are properly set and functioning.

"If you don't have brakes ... you don't have control of the train," Rookaird says. "You can crash into things."

Testing air brakes is standard operating procedure for Class 1 railroads, including BNSF. But on that day, Rookaird's supervisor told him and his crew to hurry up, and that the air brake test wasn't necessary.

"It was really odd," Rookaird says. "We were looking at each other, going, 'Can he be serious? What is going on here?'"

Rookaird did the air brake test. His supervisor then dismissed him for the day. A

railroads, and asked if he'd done anything wrong. The FRA said he was right to have conducted the air brake test, even though his supervisor told him not to.

Later, the FRA conducted an investigation of the incident and fined BNSF Railway. The FRA declined to be interviewed for this story. A month later, BNSF fired Rookaird. The company claimed he failed to work efficiently and had not properly filled out his timesheet that day.

More than fifteen trains of oil from the Bakken Shale of North Dakota cross the American Northwest each week, most of it transported by BNSF. Forty-seven people died last summer when air brakes on a train carrying Bakken oil were deactivated, allowing it to roll into a community in Quebec. That investigation is ongoing.

Curtis Rookaird is not alone in his experience with the BNSF Railway. The public radio reporting initiative EarthFix found three other pending cases where workers say they were fired for insisting that standard air brake testing procedures be followed.

In more than a dozen interviews, current and former BNSF employees described an intimidating work culture that discouraged workers from reporting accidents, injuries or safety concerns. Several spoke on condition of anonymity because they are afraid BNSF will fire them for speaking out.

BNSF Railway declined to be interviewed for this story.

Herb Krohn, a union representative for 2000 rail workers in Washington state, decries what he calls a "culture of blame" in the industry. "There's this ... 'blame the messenger' kind of situation," he says. "We've had situations where people have been fired because they continually *did* report safety violations."

relatively short notice and their schedules are often erratic, making it difficult to get adequate or regular sleep.

Krohn says that workers on any given oil train rolling through Seattle may have been awake for 24 hours at a stretch. That, combined with fewer workers per train than in the past, could be a recipe for disaster.

"The history of railroads in America has been one where things generally don't get corrected until people die," Krohn says, "and that is frightening to me."

In an emailed statement, BNSF says it conducts frequent operational tests and audits to make sure employees are working safely and in compliance with all company rules. The company also pointed to its formal policies prohibiting retaliation against whistleblowers.

At a rail safety meeting held in Vancouver, Washington, in March, BNSF spokeswoman Courtney Wallace told EarthFix the company is committed to worker safety.

"We have a safety culture," Wallace said. "If an employee sees something that isn't right — whether that's a supervisor-level or someone below them or at their level — they feel comfortable enough to say, 'Stop, that is not the right approach.'"

Curtis Rookaird is skeptical. He and other current and former BNSF employees say management values speed over safety. "They get performance bonuses based upon velocity — and if they don't show those cars moving, they don't get those bonuses," Rookaird says.

His legal battle with BNSF is now in its fourth year. He found work in North Dakota oil fields as a truck driver, but the pay wasn't as good as when he worked

Curtis Rookaird's wife, Kelly, says that BNSF — which is controlled by billionaire Warren Buffett — is delaying justice and had no right to fire her husband.

"Safety should come over money," she says. "That's what I'd like to say to Warren Buffett. 'Wake up. Us little people — you can take everything from us — but you're not going to take our pride and our dignity.' [Curtis] loved his job and we loved his job, too. He would take those boys out to the train and teach 'em about the engines ... He thought maybe one day one of these kids might want to follow in his footsteps, but now that we go through this, I don't know."

In September of last year, the Federal Occupational Safety and Health Administration ruled in favor of Curtis Rookaird and ordered BNSF to put him back to work. BNSF appealed OSHA's ruling, as they have done with several other similar whistleblower cases.

The Rookaird's home is now in foreclosure, and the family could be forced to move within a month. Curtis Rookaird's case won't go before a federal court until May of next year.

This story is based on a longer article from the collaborative reporting initiative EarthFix reported by Ashley Ahearn, with help from Tony Schick. It also appeared on PRI's Living on Earth, a weekly environmental news and information program.

Local News

Ex-BNSF engineer claims he was wrongly fired after avoiding rail mishap in Portland

Originally published January 22, 2018 at 10:47 am *Updated January 22, 2018 at 11:06 am*

A federal judge recently denied the railroad's request to dismiss a lawsuit filed by James T. Norvell, a Ballard resident, and scheduled a trial for later this year.

By Mike Carter
Seattle Times staff reporter

A former engineer for BNSF Railway now working and living in Ballard claims in a federal whistleblower lawsuit that he was fired for damaging company property after he was forced to throw a runaway locomotive into reverse to avoid a potentially catastrophic accident in Portland in 2015.

A federal judge in Tacoma earlier this month denied a motion by the railroad to dismiss the lawsuit filed in August by James T. Norvell, finding that Norvell's claims at this point give him standing to sue over his contention that he was improperly fired for discharging a public duty — protecting the lives of citizens and employees in and around the Willbridge rail yard in Portland on July 12, 2015.

According to the lawsuit, Norvell was a 13-year veteran engineer who was assigned to drive Locomotive 2339 and 22 freight cars between two connected BNSF rail yards, called the Lake Yard and the Willbridge Yard. Both are located along the Willamette River.

Norvell was at the controls of a train heading into the Willbridge Yard, within the speed limit, when "locomotive 2339 did not respond to Norvell's efforts to slow," according to the lawsuit.

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The lawsuit claims that the tracks within the yard "are unique in that they all run downhill."

According to the suit, Norvell was aware there were others working around him and "knew there were loaded hazardous tank cars at the bottom of the yard and parked in a manner roughly broadside to the direction of travel of his train."

Moreover, the lawsuit notes, the Willbridge Yard is surrounded by petroleum and chemical tank farms.

"If he could not stop the train, Norvell would have put the lives of his co-workers in peril and likely would have caused an enormous explosion and/or spill of hazardous materials that would have put the public at large in danger," according to the lawsuit.

"With no other option to stop the train in time to avoid catastrophe, Norvell threw the throttle into reverse and was able to bring the train to a safe stop," the lawsuit said.

The result, however, was that the locomotive sustained serious damage.

Four days after the incident, according to the lawsuit, Norvell was notified that BNSF had initiated disciplinary proceedings against him because he had "failed to properly stop your movement in accordance with proper train handling," resulting in damage to the locomotive.

At a hearing a month later, Norvell presented evidence — in the form of an affidavit and testimony of a BNSF locomotive mechanic identified as Warren Stout — about shortcomings at the Vancouver, Washington, BNSF maintenance facility where Locomotive 2339 had recently been serviced.

Norvell also provided maintenance logs showing the locomotive "had brake rigging defects that had not been properly addressed despite multiple reports of the problem and multiple trips to the BNSF locomotive facilities in Vancouver and Seattle" before the July 12 incident at Willbridge Yard, according to the lawsuit.

Stout, according to the lawsuit and the sworn affidavit, concluded that BNSF's "Band-Aid" approach to maintenance and its "refusal to authorize proper repairs to locomotives, including 2339, had resulted in a 'fleet of substandard and noncompliant locomotives haunting the area.' "

One of Norvell's attorneys, Jeff Dingwall, of San Diego, said the railway "chose to blame him instead of owning up to the fact" of the maintenance problems.

Sonja Fritts, a Seattle lawyer representing BNSF, declined to comment Thursday on the allegations and referred inquiries to BNSF Railway spokesman Gus Melonas, who said the railroad had no comment.

However, in its answer to Norvell's complaint, filed with the court on Wednesday, the railway denied all of Norvell's substantive claims, up to and including his allegations that the public was in danger, that a catastrophe was averted, and that the tracks at the Willbridge Yard slope downhill.

In seeking to dismiss the claim outright, BNSF argued that the company's collective-bargaining agreement with the engineer's union governs his dismissal and that Norvell's case doesn't belong in federal court.

U.S. District Judge Benjamin Settle disagreed and set a trial date for Sept. 17, although it is likely that will be delayed. In the meantime, both sides will proceed with discovery and depositions.

"It is clear that railroad employees such as plaintiff have important rights and duties under public policy that are protected independently of the [collective-bargaining agreements governing] their labor relations," Settle wrote.

"For instance, [the law] expressly provides a cause of action for railroad employees who suffer retaliation for reporting railroad hazards and misconduct by railroad carriers," the judge said.

Norvell now works as an engineer at the Ballard Terminal Railroad.

Mike Carter: mcarter@seattletimes.com or 206-464-3706

Closings

EX-BNSF ENGINEER RAISES SAFETY CONCERNS, CLAIMS WRONGFUL TERMINATION

James Norvell says he stopped locomotive 2339 before it could crash into a group of hazardous train cars in Portland. He was fired -- and then claims he learned about the history of 2339.

A train engineer says he was wrongfully terminated by BNSF Railway Company after he prevented a crash. He is now suing his old employer in federal court, saying his case highlights concerns about how locomotives are repaired.

James Norvell, a third generation train engineer in his family, started working for BNSF in 2002. He was fired in August of 2015 because of what happened the month before.

According to Norvell, during a nightshift, he was at the controls of locomotive 2339 for the purpose of bringing 22 freight cars from one yard to another in Portland.

"When I was applying the independent brake I had absolutely nothing," he said.

He says loaded, hazardous tank cars were at the bottom of the yard.

"All around that yard was some of the most volatile fluid you can possibly put in tanks. I felt that any sort of explosion or anything could have caused a pretty good size chain reaction that would have left a hole in north Portland," said Norvell.

He threw the throttle into reverse, causing the train to stop. As a result, the locomotive was damaged, and BNSF eventually fired him for failing to safely operate a train.

Norvell says he talked with BNSF machinist Warren Stout.

"When I talked to Warren about it and got a larger picture for what was really going on, I figured maybe I might have a case," said Norvell.

He says Stout claims there have been past issues with locomotive 2339, and in general, says there have been "band-aid fixes" and "a decline in regular maintenance."

BNSF spokesperson Gus Melonas said the company is not commenting at this point. In federal court, BNSF filed a 11-page document. In those pages, BNSF denies any wrongdoing. BNSF also states that the company has "extensive safety protocols, procedures and policies to ensure the safe operation of trains."

But Norvell says he experienced something different.

To BNSF, Norvell says, "This is not my fault here. This is something that you guys have created and put me in this situation, and luckily for you, I was able to take action and not create a larger catastrophe."

He plans to make his case in federal court later this year.

Motorist Killed by BNSF Train at Dangerous, Unguarded Crossing

(Bonner County, Idaho — December 31, 2013)

A dangerous and unguarded BNSF railroad crossing between the communities of Sagle and Sand Point in Bonner County, ID was the site of its third accident at about 4:22 P.M. Tuesday afternoon when a collision between a BNSF freight train travelling at a speed of 59 mph from Portland, OR to Chicago, IL and a vehicle driven by 25-year-old Kaitlin Brosh claimed the life of the female motorist.

Even though the Heath Lake Road crossing of BNSF tracks sees a daily average of 55 trains, including Amtrak passenger, BNSF and Montana Rail Link trains which operate at a maximum allowable speed of 70 mph, the crossing has no active protective devices such as flashing lights, bells and crossing gates, but rather is equipped only with passive railroad cross-buck and highway stop signage, therefore making the warning to drivers of approaching trains on the double-tracked rail corridor nearly impossible at best.

The victim was pronounced dead at the scene, making her the first fatality at the BNSF/Heath Lake Road intersection after two earlier accidents had resulted in a total of three non-fatal injuries suffered by motorists and their passengers.

As previously mentioned, this collision happened at a dangerous, unguarded crossing that does not have flashing lights or automatic gates. It is virtually certain that lights and gates would have prevented this incident. Both BNSF and Operation Lifesaver know lights and gates are the most effective type of protection at railroad crossings. Studies that have been

reduce the number of vehicle/train accidents by as much as 96%.

By Pottroff Law Office, P.A. | Posted on January 2, 2014
Tags: **Crossing accidents**, **Motor vehicles**, **Train accidents**

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NTSB Safety Compass

RAIL SAFETY

Rail Workers: Deadly Tired...but Still Working

MARCH 21, 2016 | NTSBGOV | 38 COMMENTS
By Georgetta Gregory

The rail business is an industry full of tired, stressed workers. It is an epidemic.

I know this first-hand because, before coming to the NTSB several years ago, I spent more than 30 years working in the freight railroad industry. While freight railroad managers and crews count on reliable schedules to make their shipments and make their customers happy, there is no routine schedule for the hundreds of thousands of crewmembers employed in this business. As a result, many railroad workers are literally walking and working in their sleep.

I was one of them.

One of my last jobs before coming to the NTSB was as a trainmaster for a major freight railroad. My duties included safely seeing the arrival and departure of trains in and out of terminals in California. I spent a large majority of my time reviewing train schedules and communicating with train personnel of arriving and departing trains. I coordinated the efforts of nearly 300 crewmembers, including yardmasters, dispatchers and engineers, to execute the transportation plan on my territory. Additionally, I was responsible for making sure all the work was done safely and in accordance with rules and regulations.

The job was very stressful and required long hours. It wasn't unusual for me to work 80 hours a week. I often worked overnight, evenings, weekends and long hours.

Over time, I became chronically fatigued. I gained weight and began to lose my memory and other cognitive abilities. I had no routine schedule for sleep, because I worked irregular hours that were counter to my circadian rhythms. Eventually, I began to make mistakes at work and in my personal life – potentially dangerous ones.

Noting how my work and home life was suffering, I went to a sleep specialist. The doctor determined that I was fatigued at a dangerous level – to the point where the state of California took my driver's license. Ironically, while I could no longer drive a car, I was still expected to carry out the meticulous details associated with managing rail yards.

I warned my bosses, but there was little help or response. I made suggestions for improvements, including encouraging the railroad to provide better lineups and opportunities for rest, but I felt unsupported and became concerned for the safety of my crews. Eventually, I left the railroad and

began a new career.

My story is not unusual. And when I came to the NTSB as Chief of the Railroad Division, I quickly learned that the NTSB also realized the dangers of fatigue in the railroad business. As a result of our investigations in recent years, we have issued more than 25 recommendations related to managing fatigue—all still open, needing to be addressed.

One accident, in particular, involving a freight train perhaps best highlights the danger the NTSB is attempting to eradicate. In April 2011, an eastbound BNSF Railway (BNSF) coal train traveling about 23 mph, collided with the rear end of a standing BNSF maintenance-of-way equipment train near Red Oak, Iowa (http://www.ntsb.gov/investigations/AccidentReports/Pages/RAR1202.aspx). The collision resulted in the derailment of 2 locomotives and 12 cars. The lead locomotive's modular crew cab was detached, partially crushed, and involved in a subsequent diesel fuel fire. Both crewmembers on the striking train were fatally injured.

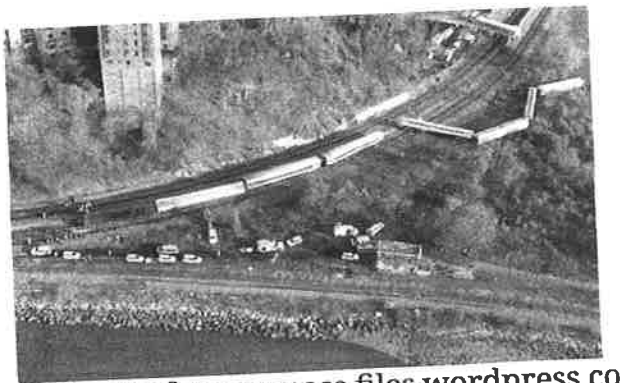
(https://safetycompass.files.wordpress.com/2016/03/red-oak-ia.jpg)

Wreckage of BNSF train, including lead locomotive of striking train, at Red Oak, Iowa.

We determined that the probable cause of the accident was the failure of the crew of the striking train to comply with the signal indication requiring them to operate in accordance with restricted speed requirements and stop short of the standing train because *they had fallen asleep due to fatigue* resulting from their irregular work schedules and their medical conditions.

As a result of that accident, we recommended that the railway require all employees and managers who perform or supervise safety-critical tasks to complete fatigue training on an annual basis and document when they have received this training, and that they medically screen employees in safety-sensitive positions for sleep apnea and other sleep disorders.

Both the conductor and the engineer had worked irregular schedules for several weeks leading up to the accident. During this time, work start times often varied significantly from day to day for both crewmembers. Changing work start and end times can make achieving adequate sleep more difficult, because irregular work schedules tend to disrupt a person's normal circadian rhythms and sleep patterns, which in turn can lead to chronic fatigue.


(https://safetycompass.files.wordpress.com/2016/03/metro-north.jpg)

More recently, we investigated an accident in New York where a Metro North Railroad locomotive engineer was operating a train with undiagnosed severe obstructive sleep apnea (OSA). The train, on its way toward Grand Central Station in New York, New York (http://www.ntsb.gov/investigations/AccidentReports/Pages/RAB1412.aspx), had 115 passengers on board. The engineer headed into a curve with a 30 mph

Scene of the derailment of Metro North Train 8808.

speed limit traveling at 82 mph, resulting in a derailment. Sixty-one people were injured, and 4 passengers died.

The engineer experienced a dramatic work schedule change less than 2 weeks before the accident, with his wake/sleep cycle shifting about 12 hours. Previously, he had complained of fatigue but had not been tested or treated for sleep apnea. After the accident he had a sleep evaluation that identified excessive daytime sleepiness and underwent a sleep study resulting in a diagnosis of severe OSA. Following the study, he was treated successfully for OSA within 30 days of the diagnosis.

The NTSB issued safety recommendation to the Metro-North Railroad to revise its medical protocols for employees in safety-sensitive positions to include specific protocols on sleep disorders, including OSA.

We have issued numerous recommendations to the Federal Railroad Administration, as well, requiring it to develop medical certification regulations for employees in safety-sensitive positions that include, at a minimum, a complete medical history that includes specific screening for sleep apnea and other sleep disorders, a review of current medications, and a thorough physical exam. If such a recommendation had been implemented at the railroad for which I worked, my fatigue most likely would have been caught earlier and mistakes avoided.

(Note: As I was writing this blog, I was heartened to hear that, on March 8, the FRA announced it was seeking public input on the impacts of screening, evaluating and treating rail workers for obstructive sleep apnea.)

And while the railroads and the federal regulators are responsible for addressing this epidemic, so too must railroad workers recognize the dangers of working while fatigued. Yet many are compelled to make money and want to stay ready to react at any hour of the day to avoid missing the opportunity to get paid. To a certain extent, I understand this. And that's why we must also work with labor unions to address this issue and provide workers the opportunity for sleep, while still allowing them the opportunity to get a paycheck and progress in their careers.

Fatigue in transportation is such a significant concern for the NTSB that it has put "Reduce Fatigue-Related Accidents (http://www.ntsb.gov/safety/mwl/Pages/mwl1-2016.aspx)" on its Most Wanted List of transportation safety improvements. It is not just an issue in rail, but an issue in all modes of transportation that must be addressed.

As a former railroad worker and now as a supervisor of railroad accident investigators, I can tell you we still have a long way to go to address this issue. Doing so will require the joint efforts of the regulator, the operator, and the employee. These efforts must be undertaken, because we can't keep running down this dangerous track.

Georgetta Gregory is chief of NTSB's Railroad Division.

FATIGUE **MOST WANTED LIST** **MOST WANTED LIST 2016**

Lights illuminate cars from an Amtrak train that derailed above Interstate 5 on Dec. 18, 2017, in DuPont, Washington.Elaine Thompson / AP

The train that careened off a bridge outside Tacoma, Washington, killing three people was traveling at 80 mph on a 30-mph stretch of track, federal investigators confirmed late Monday.

During a late-night briefing with reporters, NTSB board member Bella Dinh-Zarr added that Train 501 of Amtrak's Cascades service from Seattle headed south to Portland, Oregon, was carrying 80 passengers, three crew and two service personnel.

She said it was "too early to tell" why the train was travelling at 80 mph.

"We were glad that we were able to get the data from the event data recorder from the rear locomotive," she said at the briefing. "The front locomotive as you can imagine is a bit more difficult to access."

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Deadly Amtrak derailment: Investigators begin looking for cause

02:06

http://www.heraldcourier.com/news/update-train-cars-confirmed-to-have-derailed-in-wise-county/article_f4827596-ccd5-11e7-8c9c-9f21c350627b.html

BREAKING

Update: 38 train cars confirmed to have derailed in Wise County, Va.

Staff Nov 19, 2017

UPDATE: A Norfolk Southern Railroad official confirmed 38 cars derailed on Saturday in Wise County, Virginia.

Four rail cars overturned into Pigeon Creek, spilling an estimated 400 tons of coal into the creek, company spokesman Jonathan Glass said as of 9:15 a.m on Sunday. Six other cars turned over on the bank of the creek.

Norfolk Southern is continuing cleanup and recovery efforts on Sunday, Glass said. The company is working closely with the Virginia Department of Environmental Quality to minimize impacts to the waterway.

The cause of the derailment still remains under investigation. No injuries were reported, Glass said.

UPDATE: A Norfolk Southern Railroad official says an estimated 36 cars derailed Saturday evening in Wise County, Virginia.

Company spokesman Jonathan Glass said an undetermined amount of coal spilled into Pigeon Creek as a result of the incident.

Norfolk Southern has specialists in route to begin re-railing the cars and cleaning up spilled coal. The company hopes to have Exeter Road, which was closed late Saturday, reopened by midmorning Sunday,

The cause of the derailment is under investigation, Glass said.

APPALACHIA, Va.—A "major train derailment" has been reported in the Imboden community of Wise County, Virginia, according to the Appalachia Fire Department.

A Norfolk Southern coal train derailed, company spokesman Jonathan Glass confirmed late Saturday. The derailment occurred about 8:40 p.m.

Glass did not know how many cars derailed, but said the train consisted of three locomotives and 54 rail cars.

The Exeter Road crossing was completely blocked Saturday night, along with access to the Imboden community, according to a notice posted on the Fire Department's Facebook page. Anyone who lives in Exeter, Lower Exeter or Keokee is advised to seek an alternate route through Lee County.

The Appalachia Fire Department is blocked from providing services to Exeter and Lower Exeter, the notice states. Lee County will be providing emergency services until the Exeter crossing is reopened.

"AFD will advise the public when the road reopens," the notice states. "Expect the Exeter crossing to be blocked for some time. AFD is asking everyone to stay away from the crash site."

A Virginia State Police spokeswoman confirmed troopers were responding to the derailment site to assist the Wise County Sheriff's Office.

The Virginia Department of Transportation reported that a portion of Exeter Road, or state Route 68, will be in closed for multiple days due to extensive cleanup and repairs to roadway as a result of the incident.

No injuries were reported late Saturday, Glass said.

Robert Sorrell

Jess Nocera

Fact Sheet

The U.S. Environmental Protection Agency (EPA)
Proposes to Reissue a National Pollutant Discharge Elimination System (NPDES) Permit to Discharge Pollutants Pursuant to the Provisions of the Clean Water Act (CWA) to:

City of Sandpoint
Wastewater Treatment Plant

Public Comment Start Date: October 31, 2014
Public Comment Expiration Date: December 1, 2014

Technical Contact: Brian Nickel
206-553-6251
800-424-4372, ext. 3-6251 (within Alaska, Idaho, Oregon and Washington)
Nickel.Brian@epa.gov

The EPA Proposes To Reissue an NPDES Permit

The EPA proposes to reissue the NPDES permit for the facility referenced above. The draft permit places conditions on the discharge of pollutants from the wastewater treatment plant to waters of the United States. In order to ensure protection of water quality and human health, the permit places limits on the types and amounts of pollutants that can be discharged from the facility.

This Fact Sheet includes:

- information on public comment, public hearing, and appeal procedures
- a listing of proposed effluent limitations and other conditions for the facility
- a map and description of the discharge location
- technical material supporting the conditions in the permit

State Certification

The EPA is requesting that the Idaho Department of Environmental Quality (IDEQ) certify the NPDES permit for this facility, under Section 401 of the Clean Water Act. Comments regarding the certification should be directed to:

Idaho Department of Environmental Quality
2110 Ironwood Parkway
Coeur d'Alene, ID 83814
(208) 769-1422

Table of Contents

Table 1: Effluent Limit Violations during the Term of the Previous Permit (January 2002 – May 2012)			
Parameter	**Statistic**	**Units**	**Number of Instances**
Total suspended solids (TSS)	Monthly average removal rate	% removal	6
Five-day biochemical oxygen demand (BOD_5)	Monthly average removal rate	% removal	4
E. coli	Daily maximum	#/100 ml	6
E. coli	Monthly geometric mean	#/100 ml	1
Total residual chlorine (TRC)	Monthly average	mg/L	2
BOD_5[1]	Weekly average	lb/day	5
BOD_5[1]	Monthly average	lb/day	2
TSS	Weekly average	lb/day	1
TSS	Weekly average	mg/L	1
TSS	Monthly average	mg/L	1
Notes: 1. In these instances, the effluent loads of BOD_5 (in lb/day) were greater than the effluent limits in the prior permit but less than the effluent limits in the reissued permit.			

III. Receiving Water

This facility discharges to the Pend Oreille River near Sandpoint, Idaho. The outfall is located at river mile 117, about 1 mile downstream (i.e., west) of the U.S. Highway 95 bridge, 925 feet from the shore, and 17 feet below the surface of the water. The outfall is equipped with a diffuser.

A. Low Flow Conditions

The low flow conditions of a water body are used to assess the need for and develop water quality based effluent limits (see Appendix D of this fact sheet for additional information on critical low flows). These flows were calculated by first subtracting the measured daily flow rates of the Priest River (USGS station #12395000) from those measured in the Pend Oreille River at Newport, Washington (downstream from the Priest River, at USGS station #12395500), to obtain estimated daily river flows for the Pend Oreille River at Sandpoint. The critical low flows were then calculated from the estimated daily flows.

Table 1: Low Flows in the Pend Oreille River at Sandpoint in CFS				
1Q10	**7Q10**	**30B3**	**30Q5**	**Harmonic Mean**
2,410	3,880	8,090	7,360	16,800

B. Water Quality Standards

Overview

Section 301(b)(1)(C) of the Clean Water Act (CWA) requires the development of limitations in permits necessary to meet water quality standards. Federal regulations at 40 CFR 122.4(d) require that the conditions in NPDES permits ensure compliance with the water quality standards of all affected States. A State's water quality standards are composed of use classifications, numeric and/or narrative water quality criteria and an anti-degradation policy.

Tribe of Indians. Therefore, no numeric water quality-based effluent limits are proposed for PCBs in the draft permit.

The draft permit proposes influent, effluent and surface water column monitoring for PCBs. These data will be used to determine if the discharges have the reasonable potential to cause or contribute to excursions above water quality standards for PCBs in waters of the State of Idaho, the State of Washington or the Kalispel Tribe of Indians. Monitoring requirements for PCBs are discussed in more detail in Section V.D below.

IV. Effluent Limitations

A. Basis for Effluent Limitations

In general, the CWA requires that the effluent limits for a particular pollutant be the more stringent of either technology-based limits or water quality-based limits. Technology-based limits are set according to the level of treatment that is achievable using available technology. A water quality-based effluent limit is designed to ensure that the water quality standards applicable to a waterbody are being met and may be more stringent than technology-based effluent limits. The basis for the effluent limits proposed in the draft permit is provided in appendices D, E and F.

B. Proposed Effluent Limitations

The following summarizes the proposed effluent limits that are in the draft permit.

1. The permittee must not discharge floating, suspended, or submerged matter of any kind in concentrations causing nuisance or objectionable conditions or that may impair designated beneficial uses.
2. Removal Requirements for BOD_5 and TSS: The monthly average effluent concentration must not exceed 15 percent of the monthly average influent concentration. Percent removal of BOD_5 and TSS must be reported on the Discharge Monitoring Reports (DMRs). For each parameter, the monthly average percent removal must be calculated from the arithmetic mean of the influent values and the arithmetic mean of the effluent values for that month. Influent and effluent samples must be taken over approximately the same time period.
3. The pH must be within the range of 6.5 – 9.0 standard units.

Table 2 below presents the proposed effluent limits for the City of Sandpoint.

Table 2: Proposed Effluent Limits

Parameter	Units	Effluent Limits		
		Average Monthly Limit	Average Weekly Limit	Maximum Daily Limit
Five-Day Biochemical Oxygen Demand (BOD_5)	mg/L	30	45	—
	lb/day	906	1359	—
	% Removal	85% (minimum)	—	—
Total Suspended Solids (TSS)	mg/L	30	45	—
	lb/day	906	1359	—
	% Removal	85% (minimum)	—	—

Table 2: Proposed Effluent Limits				
Parameter	Units	Effluent Limits		
		Average Monthly Limit	Average Weekly Limit	Maximum Daily Limit
E. coli	#/100 ml	126 (geometric mean)	—	406 (instantaneous maximum)
Total Residual Chlorine	mg/L	0.45	—	1.1
	lb/day	13.6		33.2
Mercury, Total	µg/L	0.56	—	1.1
	lb/day	0.017	—	0.033
Phosphorus, Total as P	lb/day	87	112	—

V. Monitoring Requirements

A. Basis for Effluent and Surface Water Monitoring

Section 308 of the CWA and federal regulation 40 CFR 122.44(i) require monitoring in permits to determine compliance with effluent limitations. Monitoring may also be required to gather effluent and surface water data to determine if additional effluent limitations are required and/or to monitor effluent impacts on receiving water quality.

The permit also requires the permittee to perform effluent monitoring required by parts B.6 and D of the NPDES Form 2A application, so that these data will be available when the permittee applies for a renewal of its NPDES permit.

The permittee is responsible for conducting the monitoring and for reporting results on DMRs or on the application for renewal, as appropriate, to the EPA.

B. Effluent Monitoring

Monitoring frequencies are based on the nature and effect of the pollutant, as well as a determination of the minimum sampling necessary to adequately monitor the facility's performance. Permittees have the option of taking more frequent samples than are required under the permit. These samples must be used for averaging if they are conducted using the EPA-approved test methods (generally found in 40 CFR 136 or as specified in the permit).

Table 3, below, presents the proposed effluent monitoring requirements for the City of Sandpoint. The effluent sampling location must be after the last treatment unit and prior to discharge to the receiving water. The samples must be representative of the volume and nature of the monitored discharge. If no discharge occurs during the reporting period, "no discharge" shall be reported on the DMR.

Table 3: Effluent Monitoring Requirements				
Parameter	Units	Sample Location	Sample Frequency	Sample Type
Flow	mgd	Effluent	Continuous	recording
Temperature	°C	Effluent	Continuous	recording
BOD_5	mg/L	Influent & Effluent	3/week	24-hour composite
	lb/day	Influent & Effluent		calculation[1]
	% Removal	% Removal	1/month	calculation[2]
TSS	mg/L	Influent & Effluent	3/week	24-hour composite

Table 3: Effluent Monitoring Requirements

Parameter	Units	Sample Location	Sample Frequency	Sample Type
	lb/day	Influent & Effluent		calculation[1]
	% Removal	% Removal	1/month	calculation[2]
pH	standard units	Effluent	daily	grab
E. Coli	#/100 ml	Effluent	10/month	grab
Total Residual Chlorine	µg/L	Effluent	daily	grab
	lb/day	Effluent		calculation[1]
Total Phosphorus	mg/L	Effluent	2/week	24-hour composite
	lb/day	Effluent		calculation[1]
Mercury, Total	µg/L	Effluent[4]	1/month	24-hour composite
	lb/day	Effluent[4]		calculation[1]
	µg/L	Influent[4]	1/quarter	24-hour composite
Total Ammonia as N	mg/L	Effluent	1/month	24-hour composite
Nitrate + Nitrite	mg/L	Effluent	1/quarter	24-hour composite
Total Kjeldahl Nitrogen	mg/L	Effluent	1/quarter	24-hour composite
Soluble Reactive Phosphorus	mg/L	Effluent	1/month	24-hour composite
Arsenic, Total	µg/L	Influent & effluent[4]	2/year[3]	24-hour composite
Cadmium, Total Recoverable	µg/L	Influent & effluent[4]	2/year[3]	24-hour composite
Chromium, Total	µg/L	Influent & effluent[4]	2/year[3]	24-hour composite
Chromium VI, Dissolved	µg/L	Influent & effluent[4]	2/year[3]	24-hour composite
Copper, Total Recoverable	µg/L	Influent & effluent[4]	2/year[3]	24-hour composite
Cyanide, weak acid dissociable	µg/L	Influent & effluent[4]	2/year[3]	24-hour composite
Lead, Total Recoverable	µg/L	Influent & effluent[4]	2/year[3]	24-hour composite
Nickel, Total Recoverable	µg/L	Influent & effluent[4]	2/year[3]	24-hour composite
Silver, Total Recoverable	µg/L	Influent & effluent[4]	2/year[3]	24-hour composite
Zinc, Total Recoverable	µg/L	Influent & effluent[4]	2/year[3]	24-hour composite
Whole Effluent Toxicity, Chronic	TU_c	Effluent	Annual	24-hour composite
PCB Congeners	pg/L	Influent & effluent	2/year	24-hour composite
2,3,7,8 TCDD	pg/L	Influent & effluent	2/year	24-hour composite
NPDES Application Form 2A Expanded Effluent Testing	—	Effluent	3x/5 years	—

Notes:
1. Loading is calculated by multiplying the concentration in mg/L by the flow in mgd and a conversion factor of 8.34. If the concentration is measured in µg/L, the conversion factor is 0.00834.
2. Percent removal is calculated using the following equation:
(average monthly influent – average monthly effluent) ÷ average monthly influent.
3. Each twice yearly influent and effluent sampling event for these parameters must consist of three 24-hour composite samples taken within a calendar week.
4. Sludge must be sampled twice per year: once during the month of May and once during the month of November.

Monitoring Changes from the Previous Permit

Effluent monitoring requirements are similar to those in the prior permit, however, the draft permit proposes more-frequent monitoring for total phosphorus and total mercury, in order to determine compliance with the new water quality-based effluent limits for those pollutants.

The Idaho WQS state that "waters designated for primary or secondary contact recreation are not to contain E. coli bacteria in concentrations exceeding a geometric mean of one hundred

contribute to excursions above water quality standards for TP, and has therefore proposed effluent limits for TP.

Table 4: Receiving Water Monitoring Requirements

Parameter and Units	Locations	Frequency
Total Mercury (ng/L)	Upstream	1/month[1]
Dissolved Copper (µg/L)	Upstream	1/month[1]
Dissolved Lead (µg/L)	Upstream	1/month[1]
Total Ammonia as N (µg/L)	Upstream	1/month[1]
Temperature (°C)	Upstream	1/month[1]
pH (s.u.)	Upstream	1/month[1]
Hardness (mg/L as $CaCO_3$)	Upstream	1/month[1]
PCB Congeners	Upstream and Downstream	2/year

Notes:
1. River samples must be grab samples collected at least once per month, every month, during the final full calendar year of the permit term.

Available effluent and receiving water data show that the facility does not have the reasonable potential to cause or contribute to excursions above water quality standards for nitrate + nitrite. Therefore, continued receiving water monitoring for nitrate + nitrite is not necessary. As explained in Appendix E, phosphorus is the most likely limiting nutrient in the Pend Oreille River. Therefore, receiving water monitoring for total Kjeldahl nitrogen is not necessary.

The EPA proposes to require surface water monitoring for total mercury, dissolved copper, and dissolved lead. Although effluent limits have been proposed for mercury, the upstream concentration of mercury in the receiving water column was estimated based on the concentration of mercury in fish tissue collected from Lake Pend Oreille. It is necessary to collect water column mercury data to ensure that the proposed effluent limits for mercury will, in fact, ensure compliance with water quality standards. Furthermore, consistent with the recommendations of the Idaho Mercury Guidance, the draft permit proposes to require monitoring of fish tissue concentrations in the receiving water once during the permit cycle.

Although the reasonable potential analysis found that the discharge does not have the reasonable potential to cause or contribute to excursions above water quality standards for copper or lead, this finding was based in part on the assumption that the upstream concentration of lead is zero and that the upstream concentration of dissolved copper is the same as the median concentration of dissolved copper measured in the Clark Fork River at the Cabinet Gorge Dam during 2010 (Hydrosolutions 2011). It is necessary to collect upstream water quality data for copper and lead for the Pend Oreille River upstream from the discharge in order to perform a more accurate reasonable potential analysis for those parameters.

Revised Fact Sheet

**The U.S. Environmental Protection Agency (EPA)
Proposes to Reissue a National Pollutant Discharge Elimination System (NPDES) Permit to Discharge Pollutants Pursuant to the Provisions of the Clean Water Act (CWA) to:**

**City of Sandpoint
Wastewater Treatment Plant**

Public Comment Start Date: April 19, 2016
Public Comment Expiration Date: May 19, 2016

Technical Contact: Brian Nickel
206-553-6251
800-424-4372, ext. 3-6251 (within Alaska, Idaho, Oregon and Washington)
Nickel.Brian@epa.gov

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The EPA is requesting that the Idaho Department of Environmental Quality (IDEQ) certify the NPDES permit for this facility, under Section 401 of the Clean Water Act. Comments regarding the certification should be directed to:

Idaho Department of Environmental Quality
2110 Ironwood Parkway
Coeur d'Alene, ID 83814
(208) 769-1422

Table of Contents

I. Applicant

A. General Information

This fact sheet provides information on the draft NPDES permit for the following entity:

City of Sandpoint
Wastewater Treatment Plant
NPDES Permit # ID0020842

Physical Address:
723 South Ella Avenue
Sandpoint, Idaho 83864

Mailing Address:
1123 Lake Street
Sandpoint, Idaho 83864

Contact:
Ryan Luttmann, Public Works Director

II. Scope of Reopened Public Comment Period

Federal regulations state that comments filed during a reopened comment period shall be limited to the substantial new questions that caused its reopening, and that the public notice under 40 CFR 124.10 shall define the scope of the reopening (40 CFR 124.14). As stated in the public notice, the EPA is only accepting comments on permit conditions that are different from those proposed in the draft permit that was issued for public review and comment on October 31, 2014.

The EPA is making significant changes to the draft permit as it was proposed in October 2014. These changes result from comments made during the initial public comment period, computer modeling of the impact of the discharge, EPA guidance, and a revised draft Clean Water Act (CWA) Section 401 certification prepared by the Idaho Department of Environmental Quality (IDEQ). To allow the public an opportunity to comment on all of these changes, the EPA has decided to reopen the public comment period to accept comments on these specific changes. The changed conditions are as follows:

- Effluent limitations for total phosphorus and total residual chlorine have been changed.
- The permit now proposes a compliance schedule for the new water quality-based effluent limits for phosphorus proposed for the season of June – September.
- The draft permit now includes effluent limitations and requires more frequent monitoring for total ammonia as N. A compliance schedule is proposed for the new ammonia limits.
- Loading (lb/day) effluent limitations for five-day biochemical oxygen demand (BOD_5), total suspended solids (TSS), and mercury have been changed.
- The draft permit now requires effluent and receiving water monitoring for conductivity and dissolved organic carbon.
- The permit now requires effluent monitoring for hardness.

- The permit now allows the permittee to discontinue influent and effluent monitoring for 2,3,7,8 tetrachlorodibenzo-p-dioxin (TCDD) after the first three samples if no quantifiable 2,3,7,8 TCDD is measured in the first three samples.
- The "Design Flow Requirement" (Part II.D) in the original draft permit has been re-titled as "Facility Planning Requirement" and re-written.
- The permit now requires monitoring for methylmercury in fish tissue once every two years.
- The permit no longer requires downstream receiving water monitoring for polychlorinated biphenyl (PCB) congeners.
- The permit now allows the permittee to discontinue upstream receiving water monitoring for PCB congeners after the first year if no quantifiable PCB congeners are measured during the first year.
- Influent sampling for mercury is now required on the same schedule as influent sampling for other metals.
- Sample collection and preservation procedures for cyanide now reference 40 CFR Part 136 instead of Standard Methods.
- The definition of "minimum level" has been changed to be identical to the definition in the sufficiently sensitive methods final rule (79 FR 49001).
- The definition of "24-hour composite" has been changed to be identical to the definition of "composite sample" in the instructions for EPA Form 3150-2C.
- The permit now requires DMRs and other reports to be submitted electronically using NetDMR by December 21, 2016.

III. Facility Information

In general, facility information is provided in the fact sheet for the initial public comment period dated October 31, 2014.

However, the 2014 fact sheet had incorrectly listed the design flow of the WWTP as 3.62 million gallons per day (mgd), when, in fact the design flow is 5.0 mgd. Since federal regulations state that "in the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow," a change to the design flow results in changes to several of the effluent limits.

A map of the treatment plant and discharge location is provided in Appendix A.

A. Permit History

The first NPDES permit was issued to this facility in June 1974. The most recent NPDES permit for the City of Sandpoint wastewater treatment plant (WWTP) was issued on November 30, 2001, became effective on January 5, 2002, and expired on January 5, 2007. An NPDES application for permit reissuance was submitted by the permittee on September 25, 2006. The EPA determined that the application was timely and complete. Therefore, pursuant to 40 CFR 122.6, the permit has been administratively extended and remains fully effective and enforceable.

The EPA issued a draft permit for public comment on October 31, 2014. The public comment period was scheduled to close on December 1, 2014, but was extended to January 30, 2015.

IV. Receiving Water

In general, the receiving water, including its low flow conditions, water quality standards, and beneficial use support status, is described in the fact sheet dated October 31, 2014.

This facility discharges to the Pend Oreille River near Sandpoint, Idaho. The outfall is located at river mile 117, about 1 mile downstream (i.e., west) of the U.S. Highway 95 bridge, and 17 feet below the surface of the water. The outfall is equipped with a diffuser which is 50 meters long. The far end of the diffuser is 281 meters (921 feet) from shore, and the near end is 231 meters (758 feet) from shore.

A. Low Flow Conditions

Low flow conditions are discussed in detail in Appendix C, and are generally the same as those used to develop the October 2014 draft permit.

The Kalispel Tribe had stated in comments filed during the initial public comment period that the effluent limits for phosphorus should be based on seasonal 30-day, 10 year low flow rates (30Q10) instead of the 10th percentile 365-day rolling harmonic mean flow of 10,259 CFS, as proposed in the October 2014 draft permit. Mixing calculations for phosphorus now use the seasonal 30Q10 flow rates. The seasonal 30Q10 flow rates are 6,640 CFS for June – September and 8,260 CFS for October – May.

B. Antidegradation

The IDEQ has completed an antidegradation review which is included in the draft 401 certification for this permit. See Appendix G for the State's draft 401 water quality certification. The EPA has reviewed this antidegradation review and finds that it is consistent with the State's 401 certification requirements and the State's antidegradation implementation procedures. Comments on the 401 certification including the antidegradation review can be submitted to the IDEQ as set forth above (see State Certification).

In its antidegradation review of the City of Sandpoint permit, the State of Idaho found that, because of the increase in the design flow of the POTW (from 3.0 mgd to 5.0 mgd), the discharge could increase the concentration of E. coli bacteria in the receiving water. The State of Idaho has determined that the increase in E. coli concentrations is insignificant, and that therefore no alternatives analysis or socioeconomic justification are required (see the draft certification at Page 4).

V. Effluent Limitations

A. Basis for Effluent Limitations

In general, the CWA requires that the effluent limits for a particular pollutant be the more stringent of either technology-based limits or water quality-based limits. Technology-based limits are set according to the level of treatment that is achievable using available technology. A water quality-based effluent limit is designed to ensure that the water quality standards applicable to a waterbody are being met and may be more stringent than technology-based effluent limits. The basis for the effluent limits proposed in the draft permit is provided in appendices D, E and F.

B. Proposed Effluent Limitations

The following summarizes the proposed effluent limits that are in the draft permit.

1. The permittee must not discharge floating, suspended, or submerged matter of any kind in concentrations causing nuisance or objectionable conditions or that may impair designated beneficial uses.
2. Removal Requirements for BOD_5 and TSS: The monthly average effluent concentration must not exceed 15 percent of the monthly average influent concentration. Percent removal of BOD_5 and TSS must be reported on the Discharge Monitoring Reports (DMRs). For each parameter, the monthly average percent removal must be calculated from the arithmetic mean of the influent values and the arithmetic mean of the effluent values for that month. Influent and effluent samples must be taken over approximately the same time period.
3. The pH must be within the range of 6.5 – 9.0 standard units.

Table 2 below presents the proposed effluent limits for the City of Sandpoint. Effluent limits printed in bold, italic type are different from the limits in the October 2014 draft permit. The EPA is specifically requesting comments on these limits.

Table 2: Proposed Effluent Limits

Parameter	Units	Effluent Limits		
		Average Monthly Limit	Average Weekly Limit	Maximum Daily Limit
Five-Day Biochemical Oxygen Demand (BOD_5)	mg/L	30	45	—
	lb/day	***1251***	***1877***	—
	% Removal	85% (minimum)	—	—
Total Suspended Solids (TSS)	mg/L	30	45	—
	lb/day	***1251***	***1877***	—
	% Removal	85% (minimum)	—	—
E. coli	#/100 ml	126 (geometric mean)	—	406 (instantaneous maximum)
Total Residual Chlorine	mg/L	***0.348***	—	***0.912***
	lb/day	***14.5***	—	***38.0***
Ammonia, Total as N (Interim)	mg/L	***32.8***	—	***62.9***
	lb/day	***1368***	—	***2623***
Ammonia, Total as N (Final)	mg/L	***21.1***	—	***40.5***
	lb/day	***880***	—	***1689***
Mercury, Total	µg/L	0.56	—	1.1
	lb/day	***0.014***	—	***0.028***
Phosphorus, Total as P ***June – September (Interim)***	lb/day	***96***	***125***	—
Phosphorus, Total as P ***June – September (Final)***	lb/day	***61***	***79***	—
Phosphorus, Total as P ***October – May***	lb/day	***96***	***125***	—

C. Schedules of Compliance

Schedules of compliance are authorized by federal NPDES regulations at 40 CFR 122.47 and by Section 400.03 of the Idaho Water Quality Standards. The Idaho water quality standards

performance. Permittees have the option of taking more frequent samples than are required under the permit. These samples must be used for averaging if they are conducted using the EPA-approved test methods (generally found in 40 CFR 136 or as specified in the permit).

Table 3, below, presents the proposed effluent monitoring requirements for the City of Sandpoint. The effluent sampling location must be after the last treatment unit and prior to discharge to the receiving water. The samples must be representative of the volume and nature of the monitored discharge. If no discharge occurs during the reporting period, "no discharge" shall be reported on the DMR.

The EPA is proposing more frequent monitoring for ammonia in order to determine compliance with the new water quality-based effluent limits for ammonia. The State of Idaho has begun negotiated rulemaking to adopt water quality criteria for copper based on the biotic ligand model, consistent with EPA recommendations. Monitoring for conductivity, dissolved organic carbon and hardness is required so that, when the State of Idaho adopts water quality criteria for copper based on the biotic ligand model, water quality criteria for copper can be evaluated. The EPA has changed the influent monitoring schedule for mercury to be consistent with influent monitoring requirements for other metals.

The permit now allows the permittee to discontinue influent and effluent monitoring for 2,3,7,8 TCDD after the first three samples if no quantifiable 2,3,7,8 TCDD is measured in the first three samples. Experience with other POTWs has shown that 2,3,7,8 TCDD may not be present in POTW influent or effluent in quantifiable amounts, and testing for 2,3,7,8 TCDD can be costly.

The EPA has also changed the sample collection and preservation procedures for cyanide. The permit now references 40 CFR Part 136 instead of Standard Methods.

Table 3: Effluent Monitoring Requirements

Parameter	Units	Sample Location	Sample Frequency	Sample Type
Flow	mgd	Effluent	Continuous	recording
Temperature	°C	Effluent	Continuous	recording
BOD_5	mg/L	Influent & Effluent	3/week	24-hour composite
	lb/day	Influent & Effluent		calculation[1]
	% Removal	% Removal	1/month	calculation[2]
TSS	mg/L	Influent & Effluent	3/week	24-hour composite
	lb/day	Influent & Effluent		calculation[1]
	% Removal	% Removal	1/month	calculation[2]
pH	standard units	Effluent	daily	grab
E. Coli	#/100 ml	Effluent	10/month	grab
Total Residual Chlorine	µg/L	Effluent	daily	grab
	lb/day	Effluent		calculation[1]
Total Ammonia as N	***mg/L***	***Effluent***	***3/week***	***24-hour composite***
	lb/day	***Effluent***		***calculation[1]***
Total Phosphorus	mg/L	Effluent	2/week	24-hour composite
	lb/day	Effluent		calculation[1]
Mercury, Total	µg/L	Effluent[4]	1/month	24-hour composite
	lb/day	Effluent[4]		calculation[1]
	µg/L	Influent[4]	***2/year[3]***	24-hour composite
Nitrate + Nitrite	mg/L	Effluent	1/quarter	24-hour composite
Total Kjeldahl Nitrogen	mg/L	Effluent	1/quarter	24-hour composite

Table 3: Effluent Monitoring Requirements				
Parameter	**Units**	**Sample Location**	**Sample Frequency**	**Sample Type**
Soluble Reactive Phosphorus	mg/L	Effluent	1/month	24-hour composite
Arsenic, Total	µg/L	Influent & effluent[4]	2/year[3]	24-hour composite
Cadmium, Total Recoverable	µg/L	Influent & effluent[4]	2/year[3]	24-hour composite
Chromium, Total	µg/L	Influent & effluent[4]	2/year[3]	24-hour composite
Chromium VI, Dissolved	µg/L	Influent & effluent[4]	2/year[3]	24-hour composite
Conductivity	***µmhos/cm***	***Effluent***	***1/month***	***24-hour composite***
Copper, Total Recoverable	µg/L	Influent & effluent[4]	2/year[3]	24-hour composite
Cyanide, weak acid dissociable	µg/L	Influent & effluent[4]	2/year[3]	24-hour composite
Dissolved organic carbon	***mg/L***	***Effluent***	***1/month***	***24-hour composite***
Lead, Total Recoverable	µg/L	Influent & effluent[4]	2/year[3]	24-hour composite
Nickel, Total Recoverable	µg/L	Influent & effluent[4]	2/year[3]	24-hour composite
Silver, Total Recoverable	µg/L	Influent & effluent[4]	2/year[3]	24-hour composite
Zinc, Total Recoverable	µg/L	Influent & effluent[4]	2/year[3]	24-hour composite
Whole Effluent Toxicity, Chronic	TU_c	Effluent	Annual	24-hour composite
PCB Congeners	pg/L	Influent & effluent	2/year	24-hour composite
2,3,7,8 TCDD	pg/L	Influent & effluent	2/year	24-hour composite
NPDES Application Form 2A Expanded Effluent Testing	—	Effluent	3x/5 years	—

Notes:
1. Loading is calculated by multiplying the concentration in mg/L by the flow in mgd and a conversion factor of 8.34. If the concentration is measured in µg/L, the conversion factor is 0.00834.
2. Percent removal is calculated using the following equation: (average monthly influent – average monthly effluent) ÷ average monthly influent.
3. Each twice yearly influent and effluent sampling event for these parameters must consist of three 24-hour composite samples taken within a calendar week.
4. Sludge must be sampled twice per year: once during the month of May and once during the month of November.

C. Surface Water Monitoring

Water Column Monitoring

Table 4, below, presents the proposed surface water monitoring requirements for the draft permit. Surface water monitoring results must be submitted with the DMRs.

The State of Idaho has begun negotiated rulemaking to adopt water quality criteria for copper based on the biotic ligand model, consistent with EPA recommendations. Monitoring for conductivity, dissolved organic carbon and hardness is required so that, when the State of Idaho adopts water quality criteria for copper based on the biotic ligand model, water quality criteria for copper can be evaluated.

The revised draft permit no longer proposes downstream receiving water monitoring for PCBs. Upstream receiving water sampling may be discontinued after the first year if no quantifiable PCB congeners are measured during the first year. PCB congeners are considered less than quantifiable if the concentrations are less than the minimum level, or if the concentrations of all detected PCB congeners are less than three times the associated

blank concentration *and* the concentration total PCBs in the associated blank is less than 300 pg/L.

Methylmercury Fish Tissue Monitoring

The EPA's *Guidance for Implementing the January 2001 Methylmercury Water Quality Criterion*, in Section 4.2.4, recommends biennial sampling of fish in waterbodies where recreational or subsistence harvesting is commonly practiced. Therefore, the revised draft permit proposes required monitoring for methylmercury in fish tissue once every two years.

Table 4: Receiving Water Monitoring Requirements

Parameter and Units	Location	Frequency
Total Mercury (ng/L)	Upstream	1/month[1]
Conductivity (µmhos/cm)	***Upstream***	***1/month[1]***
Dissolved Copper (µg/L)	Upstream	1/month[1]
Dissolved Lead (µg/L)	Upstream	1/month[1]
Dissolved organic carbon (mg/L)	***Upstream***	***1/month[1]***
Total Ammonia as N (µg/L)	Upstream	1/month[1]
Temperature (°C)	Upstream	1/month[1]
pH (s.u.)	Upstream	1/month[1]
Hardness (mg/L as $CaCO_3$)	Upstream	1/month[1]
PCB Congeners	***Upstream***	2/year[2]

Notes:
1. River samples must be grab samples collected at least once per month, every month, during the final full calendar year of the permit term.
2. The permittee may discontinue receiving water sampling for PCB congeners after the first year if no quantifiable PCB congeners are measured during the first year.

VII. Sludge (Biosolids) Requirements

The EPA Region 10 separates wastewater and sludge permitting. The EPA has authority under the CWA to issue separate sludge-only permits for the purposes of regulating biosolids. The EPA may issue a sludge-only permit to each facility at a later date, as appropriate.

Until future issuance of a sludge-only permit, sludge management and disposal activities at each facility continue to be subject to the national sewage sludge standards at 40 CFR Part 503 and any requirements of the State's biosolids program. The Part 503 regulations are self-implementing, which means that facilities must comply with them whether or not a permit has been issued.

VIII. Other Permit Conditions

A. Facility Planning Requirement

The "Design Flow Requirement" (Part II.D) in the original draft permit has been re-titled as "Facility Planning Requirement" and re-written. This provision requires the permittee to