



Oregon

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March 10, 2011

Mr. James Holm
U.S. Army Corps of Engineers
ATTN: CENPP-OP-GP
P.O. Box 2946
Portland, OR 97208-2946

Ms. Kimberly D. Bose,
Secretary
Federal Energy Regulatory Commission
888 First St., N.E., Room 1A
Washington, D.C. 20426

RE: DEQ 401 Water Quality Certification decision for Bradwood Landing Liquefied Natural Gas terminal and pipeline proposal USACE #2005-00399, FERC Docket #s CP06-365-000, CP06-366-000, CP06-376-000, and CP06-377-000

Dear Mr. Holm and Ms. Bose:

The Department of Environmental Quality (DEQ) has reviewed application materials for the above noted U.S. Army Corps of Engineers (USACE) Permit application and Federal Energy Regulatory Commission (FERC) Dockets. The applicants, Bradwood Landing, LLC, and Northern Star Energy, LLC, propose to construct a Liquefied Natural Gas (LNG) terminal and associated pipeline. Proposed impacts include discharges of: fill; dredged material and decant water; stormwater runoff during construction and for the life of the built facilities; cooling and other process water incidental to ship operations; condensate from submerged combustion vaporization processes; pipeline and tank testing; and fire suppression system maintenance and testing.

This application came to DEQ under the joint application process governing Section 404 permits. OAR 340-048-0032. The applicants did not specifically identify a process for certification of FERC's approvals under the Natural Gas Act, and FERC's subsequent Order authorizing the project dated September 18, 2008, does not expressly address the issue of compliance with the certification requirements in the Clean Water Act (CWA) Section 401. DEQ and the applicants have treated the application for certification as covering certification for purposes of both the USACE CWA Section 404 permit and FERC's orders under the Natural Gas Act.

On or about May 5, 2010, the applicants filed for bankruptcy and discontinued communications with DEQ. Although one or more trustees have been appointed by the bankruptcy court, the trustees have failed to communicate with DEQ. The application for a Section 404 permit for the project was deemed withdrawn by the Corps on June 28, 2010, because of the applicants failure

to respond to requests for information. FERC's staff has not communicated with DEQ regarding the status of the application for certification for purposes of the Natural Gas Act.

On March 2, 2011, the U.S. Court of Appeals for the Ninth Circuit, vacated the September 8, 2008, FERC order authorizing the construction and operation of the terminal and pipeline, noting that "the future of the project as currently permitted is in grave doubt." *State of Oregon v. FERC, No. 09-70269*. The court noted that Washington had denied Section 401 Certification and that Oregon had objected to the consistency determination required under the Coastal Zone Management Act. The court also based its decision on the bankruptcy trustees' transfer of the permits and intellectual property from Bradwood Landing, LLC, and Northern Star, LLC, to BL Credit Holdings, LLC. The court concluded that the approvals for the pipeline are not transferable and that terminal and pipeline essentially constitute a single project.

As described in detail in the Evaluation and Findings Report supporting this decision, DEQ advised the applicant that additional information, most notably three dimensional hydrodynamic modeling and analysis was required before DEQ could determine whether the proposed activity would comply with water quality standards. DEQ understands that the applicants ceased collecting data upon filing for bankruptcy and further, the applicants have failed to supply the modeling and analysis as agreed and in a manner that would allow DEQ to consider the information under the statutory timeline for certification.

Further, the application rests in large part upon proposed mitigation measures that were to be developed through the Section 404 permitting process or pursuant to FERC's order approving the project. The mitigation measures, in turn, were to be informed by the final biological opinion to be issued by the National Marine Fisheries Service (NMFS) under the Endangered Species Act. As noted above, the Section 404 application has been withdrawn and the final biological opinion has not been issued, both in part because of the applicant's failure to provide the necessary information.

In addition, some key mitigation measures established in the FERC order such as those addressing fish screening for vessels and terminal facilities and temperature discharges are now in question. FERC Order of September 18, 2008, at 21, 36, 65, 61, and 67. The applicants did not follow through with the development of these measures in a timely fashion for purposes of review under CWA Section 401. Further, correspondence issued by the U.S. Coast Guard indicates that some of the key mitigation measures cannot be put in place at all. Letter dated May 1, 2009, from J. G. Lantz to Kimberly D. Bose.

The project is described in more detail in the Evaluation and Findings Report (Attachment 1), which includes a detailed description of the proposed project components and locations and an analysis of the requirements for certification. The requirements for certification include demonstrating the proposed project will comply with: Sections 301, 302, 303, 306, and 307 of the federal Clean Water Act; all state regulations adopted to implement these Sections (including Oregon's US Environmental Protection Agency (EPA) approved Water Quality Standards and Antidegradation Policy); and all other appropriate water quality related requirements of state law.

DEQ denies certification under CWA Section 401 for the following reasons:

1. DEQ's water quality standards include an antidegradation policy. OAR 340-041-0004. DEQ's review under the antidegradation rule indicates that implementation of the proposal would result in a significant lowering of water quality for the parameters of: Narrative Criteria, Biocriteria, Dissolved Oxygen, Nuisance Phytoplankton, Temperature, Total Dissolved Solids, Toxic Substances, and Turbidity, and further that this lowering of water quality will adversely impact the existing designated beneficial uses including Anadromous Fish Passage, Salmonid Fish Rearing, Salmonid Fish Spawning, Resident and Aquatic Life, Wildlife and Hunting, Fishing, and Aesthetic Quality in the Columbia River. In addition, the subject waterways are already classified as Water Quality Limited so further degradation to Temperature (in all subject streams except Hunt Creek) and Toxic Substances (in the Columbia River) must be prohibited. Other considerations in the recommendation of denial of 401 WQC are that the reversal of the impacts from project induced geomorphic alterations would not be possible and mitigation was not demonstrated to be adequate or achievable. This finding on Antidegradation prevents a demonstration that the proposal will be in compliance with Section 303 of the Clean Water Act.
2. DEQ further notes that in addition to failing to demonstrate compliance with water quality standards, applicants failed to provide information required of all applicants to allow DEQ to determine whether conditions are required to ensure that the project will comply with other applicable requirements of state law. Such requirements include compliance with water quality related statewide goals and acknowledged local land use plans and regulations under ORS 197.180 and rules ensuring compliance with Oregon's Coastal Zone Management Plan.

DEQ hereby denies 401 Water Quality Certification for the Bradwood Landing LNG terminal and pipeline.

If the applicant is dissatisfied with this certification decision, a hearing may be requested. Such request must be made in writing to DEQ's Office of Compliance and Enforcement at 811SW 6th Avenue, Portland Oregon 97204 within 20 days of the mailing of this certification decision.

If you have any questions, please contact Alexandra Liverman at liverman.alex@deq.state.or.us or 503.229.6030 or at the address on this letterhead.

Sincerely,



Sally Puert
Water Quality Manager
Northwest Region

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Attachments: Evaluation and Findings Report
Antidegradation Review Sheet

cc: Trustee for Bradwood Landing, LLC
Trustee for Northern Star LLC
Paul Friedman, FERC
Susan Hughes, ODOE
Juna Hickner, DLCD
Robert Markle, NMFS
Lori Warner-Dickason, DSL

Jon Germond, ODFW
Doug Young, USFWS
Lori Ochoa, WA Ecology
Teresa Kubo, EPA
Larry Knudsen, DOJ
BL Credit Holding via Palomar Gas
Transmission LLC