



PUGET SOUNDKEEPER® ALLIANCE

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## **Puget Soundkeeper Alliance Settles Clean Water Act Suit, BNSF Railway to Pay \$1.5 Million for Puget Sound Restoration**

*Agreement Resolves Citizen Suit Alleging Illegal Stormwater Pollution from BNSF Balmer Yard Facility in Seattle, Wash.*

SEATTLE, Wash.— After a multi-year legal challenge, **Puget Soundkeeper Alliance** (Soundkeeper) has entered one of the country's largest Clean Water Act settlements involving the discharge of stormwater pollution. As part of a settlement of Federal Clean Water Act claims, **BNSF Railway Company** (BNSF) agreed to pay \$1.5 million to a third-party organization to fund Puget Sound restoration and pollution mitigation projects. Soundkeeper had earlier obtained a court ruling establishing that BNSF had illegally discharged industrial stormwater from a Seattle facility to Puget Sound. The case is pending before the Honorable John Coughenour in the Federal Court for the Western District of Washington located in Seattle.

“Stormwater pollution is killing Puget Sound. The size of this settlement is one of the largest ever in a citizen enforcement action involving stormwater discharges. It sends a strong message that stormwater pollution is an important issue and has serious consequences for polluters,” said Chris Wilke, Puget Soundkeeper and Executive Director at Puget Soundkeeper Alliance.

As described in the proposed Consent Decree submitted today to a Washington federal judge, BNSF has implemented numerous measures since the lawsuit was filed to help ensure compliance with the Clean Water Act in future discharges to Elliott Bay. By law, the Department of Justice and the Environmental Protection Agency have 45 days to review the agreement before it may be signed into legal effect as an order of the court.

The case involves stormwater discharges from BNSF's Balmer Yard facility, located between Seattle's Queen Anne and Magnolia neighborhoods. The facility discharges industrial stormwater to Elliott Bay near the public beach at Smith Cove Park. The facility is operated by Texas-based BNSF, a subsidiary of Berkshire Hathaway.

Industrial stormwater can contain toxic levels of heavy metals, such as copper, zinc, and lead, as well as oils and suspended solids. Elliott Bay is identified by state and federal agencies as providing critical habitat for threatened Chinook salmon and is home or a migration route to other species including coho salmon, sixgill shark, octopus, lingcod, marbled murrelet, harbor seals, harbor porpoise and orca whales. Polluted stormwater runoff is the number-one source of toxic loading in the Sound, according to a recent study by Department of Ecology. Heavy metals, especially copper, are particularly dangerous to the survival of salmon species, which are highly valued culturally and economically by the people of the Puget Sound Region.

Soundkeeper filed the suit against BNSF in July of 2009 under the Clean Water Act's "citizen suit" provision, which authorizes concerned citizens to step in and enforce its provisions to protect public waterways when public agencies fail to do so. Soundkeeper alleged that BNSF was in violation of its Clean Water Act permit regulating discharges of industrial stormwater from the Balmer Yard facility. Soundkeeper amended the complaint in August 2010 to add claims that BNSF's unpermitted discharges of industrial stormwater from the Balmer Yard violated the Clean Water Act.

"We identified the Balmer Yard because BNSF had consistently reported concentrations of heavy metals in its discharges far exceeding the thresholds set by its permit," said Wilke of Soundkeeper. "These pollutant levels were particularly concerning because a facility as large as the Balmer Yard can discharge a significant amount of industrial stormwater to Puget Sound." Wilke said this is an important step in the long process to clean up toxic stormwater discharges to the Sound, which is identified as a high priority in the recovery of the Sound by state and federal agencies.

Federal Judge John Coughenour entered an order in August of 2011 finding BNSF liable for extensive violations of the Clean Water Act, including for discharging industrial stormwater without a permit and for failing to implement required stormwater pollution control measures.

Soundkeeper was represented in the lawsuit by the Seattle law firm of Smith & Lowney, which focuses on environmental and public interest law. "This settlement shows that the Clean Water Act is a potent tool for holding industry accountable for illegal stormwater pollution. We hope the size of this settlement encourages businesses and governments to tackle their stormwater problems," said Brian Knutsen, the lead attorney on the case.

The Consent Decree filed today contains provisions for recovering damages to the environment and ensuring compliance with the Clean Water Act at the facility. The Consent Decree recognizes that since the case was filed, BNSF has taken significant actions to improve its management of stormwater on its site, including developing a stormwater pollution prevention plan, coating roofs to minimize zinc pollution, stabilizing banks to minimize soil erosion, and taking other actions to prevent and control spills and minimize rain contact with sources of contamination.

BNSF must pay a total of \$1.5 million to a new Puget Sound Stewardship and Mitigation Fund established by the Rose Foundation, which will award grants for environmental restoration projects in Puget Sound. "This new fund will help support important work to protect the waters of Puget Sound," said Rose Foundation Director Tim Little. "The money will be put to good use in protecting water quality and rebuilding habitat for endangered salmon for years to come."

The federal court will retain jurisdiction over the case to enforce the requirements of the consent decree, which includes the requirement that BNSF comply with the terms of its stormwater discharge permit.

The mission of Puget Soundkeeper Alliance is to protect and preserve Puget Sound through monitoring, engagement, enforcement, and partnership. Puget Soundkeeper is a licensed member of the 200-member international Waterkeeper Alliance, which fights to protect waterways around the world. Puget Soundkeeper Alliance does not receive any money from this settlement, despite the intense involvement of its staff and several board members over the years of litigation.

The proposed Consent Decree can be viewed here: [Consent Decree](#)

The Court's order on Clean Water Act violations can be viewed here: [Summary Judgment Order](#)