

Questions and Answers re. DNR's Decision on Millennium Coal Terminal

What action did DNR take today?

Because the Washington Department of Natural Resources (“DNR”) manages the land on which the coal docks would be built, the project proponent needs permission from DNR, typically in the form of a lease. There is an existing lease, signed in 2008, between DNR and Northwest Alloys, the current owner of the site. Under § 7.3 of that lease, the tenant is not allowed to “place, construct, remove or demolish” any “improvements” on the site without DNR’s consent. In today’s decision, DNR denied consent to build the coal terminal under this part of the lease.

What standard does DNR use to make the lease decision?

Under the lease, consent for construction of new facilities can be denied wherever “denial is in the best interests of the State.” This very open-ended provision allows DNR to consider any factor it deems relevant to the best interests of the state—including water quality, climate change, transportation, and public health. The final environmental impact statement governing the coal project found nine separate major, “unmitigatable” adverse environmental impacts arising from the project.

Have any other agencies taken action to reject the project?

Yes. In September, the Washington Department of Ecology refused to grant yet another authorization needed for the project to be built, called a “§ 401 certification” after the provision of the federal Clean Water Act that requires states to certify that projects will not violate state water quality standards. Ecology denied certification on multiple grounds. Millennium would need to win a lawsuit challenging Ecology’s decision in order to proceed with the project.

What did DNR find in its decision today?

DNR found that denial of the coal project would be in the best interests of the state for several reasons. The decision cited critical missing information that the proponent had failed to provide and the fact that the coal terminal was significantly larger than any of the uses contemplated under the existing lease. DNR also cited Ecology’s denial of Clean Water Act certification, as a reason that the project wasn’t in the best interest of the state.

What does that mean for the coal project?

Denial of permission from DNR means that Millennium is prohibited from building the coal docks and other infrastructure at the site, and the project must be abandoned. Millennium would have to appeal DNR’s decision and have it overturned by a court. However, the very broad standard in the lease—DNR is lawfully allowed to act “in the best interests of the state”—together with the findings of the EIS, will make it very difficult for Millennium to challenge DNR’s decision legally.

Didn't DNR already take action to reject this project?

Yes. In January of this year, DNR denied authorization under a separate provision of the lease for Alcoa to "sublease" the site to Millennium. Without that authorization, Millennium can't operate the coal terminal. Millennium challenged that decision in Cowlitz County Superior Court, and a decision in that lawsuit is pending.

What comes next?

To date, there have been three separate rejections of this project by different agencies, all of which would need to be reversed for the project to proceed. The federal permitting process appears to be in limbo due to the denial of state permits. Even though this project cannot lawfully proceed, Cowlitz County is continuing with its own local permitting process. A public hearing begins on November 2 to determine whether County shoreline and construction permits should be granted. Citizens who want something better for Longview and for Washington should participate in this hearing and ask the hearing examiner to reject this project.