



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

P.O. Box 47600 • Olympia, Washington 98504-7600
(360) 407-6000 • TDD Only (Hearing Impaired) (360) 407-6006

July 2, 2012

U.S. Army Corps of Engineers
Navigation Section
ATTN: Robert Donnelly
4735 East Marginal Way South
Seattle, WA 98134-2385

RE: Water Quality Certification - Order #9345/Corps Public Notice # CENWS-OD-TS-NS 41
Maintenance dredging of the Swinomish Channel Federal Navigation Project

Dear Mr. Donnelly:

The above-referenced public notice for proposed work in waters of the state has been reviewed in accordance with all pertinent rules and regulations. On behalf of the State of Washington, we certify that the work proposed in the public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This certification is subject to the conditions contained in the enclosed Order and may be appealed by following the procedures described in the Order.

If you have any questions concerning the content of this letter, please contact Helen Pressley at (360) 407-6076.

Sincerely,

Brenden McFarland, Section Manager
Shorelands & Environmental Assistance Program
Headquarters Office - Ecology
State of Washington

by Certified Mail:7009 0820 0001 9056 1196

Enclosure



IN THE MATTER OF GRANTING A)	ORDER #9345
WATER QUALITY)	Corps Reference No. CENWS-OD-TS-NS-41
CERTIFICATION TO)	Maintenance dredging of up to 400,000 cubic
U.S. Army Corps of Engineers)	yards of sediment from Swinomish Channel
in accordance with 33 U.S.C. 1341)	Federal Navigation Project, Skagit County,
(FWPCA § 401), RCW 90.48.120, RCW)	Washington
90.48.260 and Chapter 173-201A WAC)	

TO: U.S. Army Corps of Engineers
 Navigation Section
 ATTN: Robert Donnelly
 4735 East Marginal Way South
 Seattle, WA 98134-2385

On November 9, 2011 the U.S. Corps of Engineers (Corps) submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the Army Corps of Engineers (Corps) for the above-referenced on May 18, 2012.

The Corps plans to dredge up to 400,000 cubic yards (cy) of material from the authorized navigation channel during each dredging episode within the project period (FY 2012 and 2018), install protection for the cultural resource site, and transport dredged material to Elliott Bay to cap the Pacific Sound Resources (PSR) superfund site.

The maintenance dredging would be accomplished with a clamshell dredge. Protection of the cultural resource site will involve installing a floating breakwater that includes installation of treated wood piling as anchor points. Dredge material is proposed to be used beneficially to cap contaminated sediment at the PSR superfund site during one episode within the project period, dependent on availability of funding. Remaining material will be disposed of at the Rosario Strait and/or the Port Gardner Dredge Material Management Program (DMMP) open water disposal sites. Dredge material from this project may also be used at other approved beneficial use site.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §1311, 1312, 1313, 1316, and 1317 (FWPCA § 301, 302, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and

3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will meet the applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. § 1341, RCW 90.48.120, RCW 90.48.260, Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

1. For purposes of this Order, the term "Applicant" shall mean the U.S. Army Corps of Engineers (Corps) and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Headquarters Office, Attn: 401/CZM Federal permit coordinator, P.O. Box 47600 Olympia, WA 98504-7600 and/or hpre461@ecy.wa.gov. Any submittals shall reference Order #9345 and Corps Reference # CENWS-OD-TS-NS-41.
3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resource Permit Application (JARPA) received by Ecology on November 9, 2011. The Applicant will be out of compliance with this Order and must submit an updated JARPA if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
4. Within 30 days of receipt of an updated JARPA, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
5. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.

6. The Applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
7. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Furthermore, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified or if additional conditions are necessary to further protect water quality.
8. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project.
9. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
10. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

B. Water Quality Monitoring Conditions

1. The Applicant shall conduct turbidity monitoring by turbidity meter during dredging operations as follows, unless otherwise approved by Ecology:
 - a. Monitoring points shall be at least 150 feet upcurrent (representative of background), at the midpoint of the mixing zone (150 feet down current), and at the point of compliance (300 feet down current), and 600 feet down current from the dredge in the same water mass that flowed by the dredging.
 - b. Samples will be collected from near the surface (-2 feet below), mid-depth, and near the bottom (-2 feet above) of the water column.
 - c. Monitoring will also include a transect across the channel to determine the lateral extent of turbidity. This transect will be located 150 feet down-current of the dredge and monitored once per day by taking surface (-2 feet below), mid-depth, and near the bottom (-2 feet above) turbidity readings at a minimum of 3 locations spaced roughly equidistant across the Swinomish Channel.
 - d. Turbidity will be monitored twice per day (daylight hour only, once in the morning and once in the afternoon) during the first five days of in-water work each dredging season.

- e. Dredging equipment will be operating for at least one hour prior to the collection of water quality samples to ensure samples are reflective of water quality conditions during active operations.
2. This Order authorizes temporary turbidity area of mixing of 300 feet down current of in-water work.
3. If exceedances¹ at the point of compliance (300 feet) are detected, the Applicant shall immediately take action to stop, contain, and take other steps to prevent further violations and otherwise stop the violation and correct the problem. After the event, the Applicant shall assess the adequacy of the BMPs and update, or improve those used, to reduce and prevent recurrence of the turbidity exceedance.
4. If monitoring results demonstrate that the applicable water quality standards or project performance standards are not being met, Ecology may require additional monitoring and/or mitigation.
5. The Applicant shall notify Ecology's Federal Project Manager of any turbidity exceedances detected through water quality monitoring within 24 hours of the occurrence. Notification shall be made per condition A.2. The Applicant shall, at a minimum, provide Ecology with the following information:
 - a. A description of the nature and cause of exceedance.
 - b. The period of non-compliance, including precise dates, and when the Applicant returned, or expects to return to compliance.
 - c. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
 - d. In addition to the 24 hour notification, the Applicant shall submit a written report to Ecology that describes the nature of the exceedance, sampling results and location, photographs, and any other pertinent information within five (5) days after the exceedance. The report shall also identify what additional BMPs were, or will be, implemented to prevent further exceedances.

D. Dredging and Disposal:

1. All dredging is to be done using a clamshell. Use of any other type of dredge will require prior approval from Ecology.
2. For material being taken to open water disposal sites, all debris (larger than 2 feet in any dimension) shall be removed from the dredged sediment prior to disposal. Similar sized debris found floating in the dredging or disposal area shall also be removed.

¹ Turbidity levels above 5 NTUs over background when the background is 50 NTUs or less; or a 10 percent increase in turbidity when the background turbidity is more than 50 NTUs are considered exceedances of the water quality standards.

3. Dredging operations shall be conducted in a manner that minimizes the disturbance or siltation of adjacent waters and prevents the accidental discharge of petroleum products, chemicals or other toxic or deleterious substances into waters of the State.
4. Dredged material shall not be stockpiled on a temporary or permanent basis below the ordinary high water line.
5. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.
6. A pre-dredge meeting is required to be convened prior to the start of dredging. A **Dredging Plan** is required and shall be submitted to Ecology to the 401/CZM Federal permit coordinator at the address shown in Condition A2 for review and approval 2 weeks prior to the pre-construction meeting, unless otherwise approved by Ecology.
7. Prior to each dredging cycle, the Applicant shall contact the PSDDA agencies to determine whether additional sediment testing is required. If additional testing is required, no dredging or disposal shall be conducted until the material has been tested and a suitability determination has been issued.

E. Timing Requirements:

1. This Order shall remain in effect from date of issuance until February 14, 2018. Continuing this project beyond February 14, 2018 will require separate certifications.

F. Notification Requirements:

1. The Applicant shall provide notice to Ecology's 401/CZM Federal permit coordinator at least 7 days prior to the start of dredging each dredging season and within 14 days after completion of dredging each season. Notification should be made using all the information required in Condition A2.

G. Emergency/Contingency Measures:

1. The Applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials and an emergency call list available on site.
2. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant or operator shall immediately take the following actions:
 - a. Cease operations that are causing the compliance problem.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.

- c. In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
 - d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
 - e. Immediately notify Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events Ecology's 401/CZM Federal permit coordinator at (360) 407-6076.
 - f. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters, including wetlands
 4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology using the above phone numbers.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
<p>Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503</p> <p>Pollution Control Hearings Board 1111 Israel Rd SW STE 301 Tumwater, WA 98501</p>	<p>Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608</p> <p>Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903</p>

CONTACT INFORMATION

Please direct all questions about this Order to:

Helen Pressley, Department of Ecology
P.O. Box 47600-7600
Olympia, WA 98504
(360) 407-6076

MORE INFORMATION

Pollution Control Hearings Board (PCHB) Website

www.eho.wa.gov/Boards_PCHB.aspx

Chapter 43.21B RCW - Environmental Hearings Office – PCHB

<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>

Chapter 371-08 WAC – Practice and Procedure

<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>

Chapter 90.48 RCW – Water Pollution Control

<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>

Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State

www.ecy.wa.gov/biblio/wac173201A.html

Chapter 173-200 WAC – Water Quality Standards for Groundwater

www.ecy.wa.gov/biblio/wac173200.html

Chapter 173-204 WAC – Standards for Sediment Quality

www.ecy.wa.gov/biblio/wac173204.html

Order #9345, Corps No.CENWS-OD-TS-NS-41
Swinomish Channel Maintenance Dredging
July 2, 2012
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SIGNATURE

DATED this 29th day of June, 2012 at the Department of Ecology, Lacey, Washington



Brenden McFarland, Section Manager
Shorelands & Environmental Assistance Program
Headquarters Office, State of Washington

ATTACHMENT A

**U.S. Army Corps of Engineer
Swinomish Channel Maintenance Dredging
Water Quality Certification Order #9345**

**Statement of Understanding of
Water Quality Certification Conditions**

I have read and understand the conditions of Order #9345 Section 401 Water Quality Certification for the Swinomish Channel Maintenance Dredging. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this order.

Signature

Date

Print Name

Title

Company