



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

September 5, 2008

REGISTERED MAIL
RB 252 944 071 US

U.S. Army Corps of Engineers,
CENWP-0D-GP ATTN: Shawn Zinszer, Section Chief/200600867
333 SW First Avenue, P.O. Box 2946
Portland, Oregon 97208-2946

REGISTERED MAIL
RB 252 944 068 US

Port of Kalama
ATTN: Mr. Mark Wilson
380 West Marine Drive
Kalama, WA 98625

RE: Ecology Denial for Section 401 Water Quality Certification
U.S. Army Corps of Engineers Reference # 200600867, Port of Kalama,
Cowlitz County, Washington

Dear Mr. Zinszer and Mr. Wilson:

On October 6, 2006, the Department of Ecology (Ecology) received your Joint Aquatic Resources Permit Application (JARPA) form to obtain a Section 401 Water Quality Certification to construct the North Port Wetland Fill project. The project proposed to fill 2.1 acres of high quality Category I wetlands. The U.S. Army Corps of Engineers issued a revised Joint Public Notice for this project on December 29, 2006.

Ecology has one year from receipt of a JARPA to make a decision on a request for certification under Section 401 of the Clean Water Act. Your project's JARPA timeframe is itemized below:

- The initial JARPA was received on October 6, 2006.
- Ecology's JARPA-withdraw/reapply form was received on September 7, 2007.
- Ecology's new statutory one-year review period ends September 7, 2008.

Pursuant to Section 401 of the Clean Water Act, in order for Ecology to issue a water quality certification it must have reasonable assurance that the project as proposed will meet applicable water quality standards and other appropriate requirements of state law. Consequently, it is necessary that an applicant submit adequate information regarding a project for agency review before Ecology can determine compliance with the state water quality standards and other applicable regulations.

Ecology staff has worked closely with the Port of Kalama since receiving your initial JARPA. However, over the past year the project's scope has changed significantly and the proposed wetland impacts have increased as well. That said we have not received an adequate compensatory mitigation plan that addresses our concerns.

Over the past year, Ecology has anticipated the expiration of our statutory review period on September 7, 2008 by requesting that you withdraw your application. This would have allowed you the necessary time to design your project before re-engaging with Ecology. To date, your application withdraw has not been received.

Ecology is unable, at this time, to certify that the present proposal will meet applicable water quality standards and other appropriate requirements of state law, as required by Section 401 of the Clean Water Act. Absent sufficient information that the proposed mitigation adequately compensates for impacts to waters of the state, Ecology cannot certify this project under Section 401.

Therefore, pursuant to Section 401 of the Clean Water Act, ch.90.48 RCW and ch. 173-201A WAC, the Port of Kalama water quality certification is denied without prejudice.

Receipt of a denial without prejudice does not preclude the Port of Kalama from resubmitting a request for 401 Certification at a later date.

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

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1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

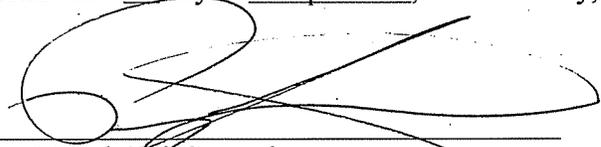
3. And send a copy of your appeal to:

Department of Ecology
Southwest Regional Office
ATTN: Mark Cline
P.O. Box 47775
Olympia, WA 98504-7775

*For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>
To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>*

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

DATED this 5 day of September, 2008 at Lacey, Washington.



Perry J Lund, Unit Supervisor
Shorelands and Environmental Assistance Program
Southwest Regional Office
Department of Ecology
State of Washington

PJL:MC:dn

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cc: James McMillan, U.S. Army Corps of Engineers
Dave Every, URS

e-cc: Loree Randall, Ecology
Mark Cline, Ecology
Lori Ochoa, Ecology