STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000
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May 9, 2016

Evan Lewis
U.S. Army Corps of Engineers, Seattle District
PO Box 3755
Seattle, WA 98124

RE: Water Quality Certification Order #12999 for Lake Washington Ship Canal – Shell Hash Removal from the Small Lock Project, Lake Washington Ship Canal, Seattle, King County, Washington

Dear Mr. Lewis:

On October 1, 2015, the U.S. Army Corps of Engineers, Seattle District, submitted an application to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification under the federal Clean Water Act for the above project, and an addendum was submitted to Ecology on April 28, 2016.

On behalf of the State of Washington, Ecology certifies that the work described in the application, addendum, and the public notice complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Erik Stockdale

Erik Stockdale, Section Manager
Shorelands and Environmental Assistance Program
Northwest Regional Office

ES:rrp:ap

Enclosure

By certified mail: 7012 1640 0000 6245 8996

cc: Jo Gardiner, U.S. Army Corps of Engineers
Laura Arber, Washington Department of Fish and Wildlife
Cindy Rathbone, Washington Department of Natural Resources
Ben Perkowski, City of Seattle
Janet Curran, NOAA Fisheries
Mark Celedonia, U.S. Fish and Wildlife Service

e-cc: Joe Burcar – NWRO
Paul Anderson – NWRO
Laura Inouye – HQ
Loree' Randall – HQ
Bob Wright – NWRO
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO U.S. Army Corps of Engineers in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	))))))	**ORDER #12999** Lake Washington Ship Canal – Shell Hash Removal from the Small Lock Project; Lake Washington Ship Canal, Seattle, King County, Washington.

TO: U.S. Army Corps of Engineers, Seattle District
Attn: Evan Lewis
PO Box 3755
Seattle, WA 98124

On October 1, 2015, U.S. Army Corps of Engineers, Seattle District (Corps) submitted a request to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on October 22, 2015. An addendum to the application was submitted on April 28, 2016.

The proposal includes removal of up to 300 cubic yards of shell hash from the small lock in order to restore passage through the navigation channel and allow for closure of the work gates. The material would be placed on site onto riprap along the opposite (south) side of the small lock wall.

The project is located at Hiram M. Chittenden Locks, 3015 NW 54th Street, Seattle, King County, Washington, Lake Washington Ship Canal, Sections 10 and 11, T. 25 N., R. 3E., WRIA 8.

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 because of project construction or operations.

A. General Conditions:

A1. For purposes of this Order, the term "Applicant" shall mean U.S. Army Corps of Engineers and its agents, assignees and contractors.

A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: Section 401/CZM Federal Permit Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #12999.

A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on October 1, 2015, and the JARPA Addendum received by Ecology on April 28, 2016. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.

A4. 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.

A5. 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.

A6. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.

A7. 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. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.

A8. 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 or mitigation sites.

A9. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state (including wetlands) or related aquatic resources, except as specifically provided for in conditions of this Order.

A10. 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 Conditions:

B1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-210(1)(e)(i).

B2. The Applicant shall monitor water quality during in-water construction according to the *Water Quality Monitoring Plan, Phase II – Removal of Remaining Shell Hash from the Small Lock by Clamshell Dredge, Lake Washington Ship Canal*, prepared by U.S. Army Corps of Engineers, dated April 2016, or as modified by this Order or revised and approved by Ecology.

C. Conditions for Construction Activities:

C1. The service gates shall be closed during removal of shell hash material in order to prevent flow through the small lock.

C2. The clamshell bucket shall be closed completely with each fill, lifted slowly through the water column, and paused at the water surface to minimize turbidity.

C3. During placement of shell hash, the spillway gates shall be closed to allow the material to settle.

C4. Shell hash material shall be placed as close to the riprap as possible, and no end dumping of shell hash into water shall be allowed.

C5. Dredged material shall not be stockpiled waterward of the Ordinary High Water Mark.

C6. Dredging activity shall be limited to daylight hours to the extent practicable.

C7. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.

C8. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.

C9. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.

C10. Biodegradable hydraulic fluids shall be utilized to the extent practicable.

C11. In-water work shall be conducted in such a way as to minimize turbidity.

C12. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology that fisheries resources may be adversely affected.

C13. The Applicant shall operate the barge(s) and tug in deep water to minimize nearshore propeller wash impacts such as suspension of nearshore sediments.

C14. Barges and other work vessels shall not be allowed to groundout during construction.

D. Emergency/Contingency Measures:

D1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.

D2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.

D3. 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.

D4. 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 shall immediately take the following actions:

a. Cease operations at the location of the violation or spill.

b. Assess the cause of the water quality problem and respond appropriately to correct the problem and/or prevent further environmental damage.

c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's Section 401/CZM Federal Permit Manager at (425) 649-7129 or (425) 649-7000.

d. 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.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

E. Timing Requirements

E1. In-water work shall be conducted between July 15 and February 15 of any year, unless otherwise approved by Ecology.

E2. This Order expires February 15, 2017.

F. Reporting and Notification Requirement Conditions

F1. Applicant shall provide notice to Ecology's Section 401/CZM Federal Permit Manager:

- At least three (3) days prior to the start of construction.
- Within 14 days after completion of construction at the project site.

Notification, referencing Order #12999 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

F2. If the project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit per Condition A2 a written construction status report and submit status reports every 12 months until construction is complete or this Order expires.

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. Chapter 43.21B RCW and Chapter 371-08 WAC govern the appeal process. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of 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.) Email is not accepted.

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

ADDRESS AND LOCATION INFORMATION

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

CONTACT INFORMATION

Please direct all questions about this Order to:

Rebekah Padgett
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008
(425) 649-7129
rebekah.padgett@ecy.wa.gov

MORE INFORMATION

Pollution Control Hearings Board Website
www.eho.wa.gov/Boards_PCHB.aspx

Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board
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 173-204 WAC – Sediment Management Standards
www.ecy.wa.gov/biblio/wac173204.html

Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington
www.ecy.wa.gov/biblio/wac173200.html

Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington
www.ecy.wa.gov/biblio/wac173201A.html

SIGNATURE

Erik Stockdale

Erik Stockdale, Section Manager
Shorelands and Environmental Assistance Program
Northwest Regional Office

5-9-2016

Date

ATTACHMENT A

U.S. ARMY CORPS OF ENGINEERS
LAKE WASHINGTON SHIP CANAL – SHELL HASH REMOVAL
FROM THE SMALL LOCK PROJECT
Water Quality Certification Order #12999

Statement of Understanding of
Water Quality Certification Conditions

I have read and understand the conditions of Order #12999 Section 401 Water Quality Certification for the U.S. Army Corps of Engineers Lake Washington Ship Canal – Shell Hash Removal from the Small Lock Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

_____ _____
Signature Date

_____
Title

_____
Company