



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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March 25, 2014

Skip Sahlin  
Pacific International Terminals  
1131 SW Klickitat Way  
Seattle, Washington 98134

<b>Administrative Order Docket #</b>	10602
<b>Gateway Pacific Terminal</b>	Portions of Sections 17, 18, and 19 of TWN 39N, R1E., Whatcom County, WA

Re: Administrative Order

Dear Mr. Sahlin:

The Department of Ecology (Ecology) has issued the enclosed Administrative Order (Order). Through this Order Ecology is taking an enforcement action and requiring Pacific International Terminals to comply with:

- Chapter 90.48 Revised Code of Washington (RCW) Water Pollution Control
- Chapter 173-201A WAC Water Quality Standards for Surface Waters of the State of Washington

The Order contains Ecology’s determination of the violation and required corrective actions.

If you have questions, please contact Susan Meyer, 425-649-7168 or [susan.meyer@ecy.wa.gov](mailto:susan.meyer@ecy.wa.gov) or Loree Randall, 360-407-6068 or [loree.randall@ecy.wa.gov](mailto:loree.randall@ecy.wa.gov).

Sincerely,

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

Enclosures: Administrative Order Docket # 10602

By certified mail: 7011 0470 0003 3720 8742

e-cc: Tyler Schroeder, Whatcom County  
Randel Perry, Corps of Engineers  
Loree Randall, Ecology  
Susan Meyer, Ecology  
Doug Allen, Ecology

Kurt Baumgarten, Ecology



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

IN THE MATTER OF AN ) ADMINISTRATIVE ORDER  
ADMINISTRATIVE ORDER ) DOCKET #10602  
AGAINST )  
Skip Sahlin )

To: Skip Sahlin  
Pacific International Terminals, Inc.  
1131 SW Klickitat Way  
Seattle, Washington 98134

<b>Administrative Order Docket #</b>	10602
<b>Corps Reference #</b>	200800260
<b>Project Site Name</b>	Gateway Pacific Terminal/ Portions of Sections 17, 18, and 19 of TWN 39N, R1E.
<b>Within the 1,108.7-acre site, there are 544.4 acres of wetlands.</b>	Approximately 3.9 acres of wetlands were impacted without permits for the construction of access roads to geotechnical boring sites. 2.9 acres of forested wetlands were cleared for the roads and another 1.0 acre of wetlands were filled by side casting graded material and tree stumps and debris.

The Department of Ecology (Ecology) has issued this Administrative Order (Order) requiring Pacific International Terminals, Inc. (PIT) to comply with:

- Chapter 90.48 Revised Code of Washington (RCW) Water Pollution Control
- Chapter 173-201A WAC Water Quality Standards for Surface Waters of the State of Washington

Ecology has the authority to issue this Order under RCW 90.48.120(2).

### **PROJECT BACKGROUND**

The Department of Ecology was notified of unauthorized clearing of vegetation, including trees and other woody vegetation in wetlands and buffers on the Gateway Pacific Terminal site on July 18, 2011. Approximately 2.9 acres of forested wetlands were cleared of vegetation and graded for access roads, roughly 17 feet wide, to conduct geotechnical borings in various locations. Another 1.0 acre of wetlands was covered by sidecast material including soil and woody debris such as rootwads, branches and tree trunks, for a total of 3.9 acres of wetland impact.

On August 17, 2011, Whatcom County issued a Notice of Violation to Pacific International Terminals, Inc. (PIT) which included a requirement for corrective actions pertaining to soil erosion and sediment control and a critical areas report and restoration plan. The Mitigation Plan

specifies that the impacted wetlands will be restored by pulling back sidecast material, scarifying compacted road beds, and replanting with native woody vegetation.

Ecology reviewed the first draft of the *Critical Areas Study and Mitigation Plan*, dated August 19, 2011, but found that it did not adequately compensate for the loss in wetland habitat functions. Some of the trees that were cut or downed by tracked excavators were mature cottonwoods and at least one mature cedar. Most of the forested wetlands were second growth alders, 30-50 years old, with a dense shrub understory.

It will take decades for the impacted wetlands' habitat functions to be fully replaced. Therefore, although Ecology supports the mitigation required by the County, Ecology required PIT to provide additional wetland mitigation to offset this time lag of habitat loss. PIT submitted an additional wetland mitigation plan dated June 7, 2012, titled *Wetlands Mitigation Plan for Temporal Loss*. This plan provides 2.9 acres of enhancement to an existing degraded wetland by removing invasive species and planting native trees and shrubs. On March 14, 2014, Ecology received a letter with a revised construction schedule for implementing the plan, because so much time had passed since the plan was finalized and accepted.

#### **DETERMINATION OF VIOLATION(S) AND ORDER TO COMPLY**

Ecology's determination that a violation has occurred is based on the information listed below. In accordance with RCW 90.48.120(2) it is ordered that PIT take the corrective actions listed below.

#### **Violation:**

PIT cleared and graded access roads and sidecast soil and woody material into wetlands throughout the Gateway Pacific Terminal project site without authorization from the Department of Ecology (Ecology). Unauthorized clearing, grading, and filling within waters of the state is a violation of RCW 90.48. The discharge of polluting matters into waters of the state is also a violation of the anti-degradation policy, WAC 173-201A-300.

#### **Corrective actions:**

1. Fully implement and comply with the Critical Areas Study and Mitigation Plan (Revision 3), dated June 15, 2012.
2. Fully implement and comply with the Wetlands Mitigation Plan for Temporal Loss, dated June 7, 2012 and the revised construction schedule, dated March 14, 2014.
  - a. By June 1, 2014, PIT must:
    - Submit a revised monitoring schedule for the 2.9 acre enhancement area.
    - Submit an as-built plan and report for each stage of the planting portion of the enhancement project.

**FAILURE TO COMPLY WITH THIS ORDER**

Failure to comply with this Order may result in civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

**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 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.) E-mail 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**

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

**CONTACT INFORMATION**

Please direct all questions about this Order to:

Susan Meyer  
Department of Ecology  
Northwest Regional Office (NWRO)  
3190 160<sup>th</sup> Ave SE  
Bellevue, WA 98008-5452  
425-649-7168  
[Susan.meyer@ecy.wa.gov](mailto:Susan.meyer@ecy.wa.gov)

**MORE INFORMATION**

- **Pollution Control Hearings Board Website**  
[www.eho.wa.gov/Boards\\_PCHB.aspx](http://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 34.05 RCW – Administrative Procedure Act**  
<http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **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 of Washington**  
[www.ecy.wa.gov/biblio/wac173201A.html](http://www.ecy.wa.gov/biblio/wac173201A.html)

**SIGNATURE**

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

3-25-2014  
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March 25, 2014