



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
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June 30, 2015

Port of Anacortes
ATTN: Jenkins Dossen
100 Commercial Avenue
Anacortes, WA 98211

RE: Water Quality Certification Order No. 11633 for Corps NWP No. NWS-2014-1008 Port of Anacortes Cap Sante Marina M, N, and O Docks Maintenance Dredging, Skagit County, Washington

Dear Mr. Dossen:

On October 17, 2014 the Port of Anacortes submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting 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 March 18, 2015.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA 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 Laura Inouye at (360)-407-6165. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Brenden McFarland
Shorelands and Environmental Assistance Program

Enclosure



Mr. Dossen
June 30, 2015
Page 2

cc: Michelle Walker, Corps of Engineers

by certified mail 7010 2780 0000 2503 4324

e-cc: ecyrefedpermits@ecy.wa.gov
Frank Nichols, U.S. Army Corps of Engineers
Becky Darden, Port of Anacortes
Loree' Randall – Ecology, HQ-SEA
Laura Inouye– Ecology, HQ-SEA

IN THE MATTER OF GRANTING A) ORDER #11633
WATER QUALITY) Corps Reference No. NWS-2014-1008
CERTIFICATION TO) Cap Sante Marina M, N, and O Docks
Port of Anacortes) Maintenance Dredging in Anacortes, Skagit
in accordance with 33 U.S.C. 1341) County, Washington
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: Mr Jenkins Dossen
Port of Anacortes
100 Commercial Avenue
Anacortes, WA 98211

On October 17, 2014 the Port of Anacortes (Port) submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting 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 March 18, 2015.

The Port proposed to conduct maintenance dredging of a portion of the existing Cap Sante Marina to -7 MLLW with a 1 ft overdredge allowance. Dredging of up to 7500 CY of material unsuitable for in-water disposal will be conducted using a barge-based mechanical dredge. Dredge material will be disposed of at an approved upland disposal site. Temporary relocation of docks may be required to provide access to the dredge area. As a result of dock relocation minor overwater dock repairs may be required that include replacement of whalers, rub strips, cleats, and restoration of disturbed dock utilities. No pile driving work is anticipated, therefore this Order does not authorize pile driving.

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. In this Order, the term "Applicant" shall mean the Port of Anacortes and its agents, assignees and contractors.
2. All submittals required by this Order shall be sent to Ecology's Headquarters Office, Attn: Federal Permit Coordinator, P.O. Box 47600 Olympia, WA 98504-7600 and/or fednotification@ecy.wa.gov. Any submittals shall reference Order #11633 and Corps Reference #NWS-2014-1008
3. All notifications listed below shall be made via phone to Laura Inouye, (360)-407-6165, or e-mail at fednotification@ecy.wa.gov. These notifications shall be identified with Order #11633 and include the Applicant's name, the project contact, and the contact's phone number.
 - a. At least ten (10) days prior to conducting initial in-water work activities for each in-water work window.
 - b. Within at least seven (7) days after completion of the in-water work.
4. Work authorized by this Order is limited to the work described in the Joint Aquatic Resources Permit Application (JARPA) received by Ecology on October 17, 2014, unless otherwise authorized by Ecology.
5. The Applicant shall obtain Ecology review and approval before undertaking any changes to the proposed project that might significantly and adversely affect water quality, other than those project changes required by this Order.

6. Within 30 days of receipt of the updated information, Ecology will determine if the revised project requires a new public notice and Certification or if a modification to this Order is required.
7. The Applicant shall keep copies of this Order 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.
8. Upon Ecology personnel's request, the Applicant shall provide access to the project site, all staging areas, and mitigation sites for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
9. 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.
10. In the event of changes or amendments to the state water quality, ground water quality, or sediment standards, or changes in or amendments to the state Water Pollution Control Act (RCW 90.48), or the federal Clean Water Act, Ecology will issue an administrative order to incorporate any such changes or amendments applicable to this project.
11. 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.
12. 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.
13. 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.
14. This Order will automatically transfer to a new owner or operator if:
 - a. A written agreement between the Applicant and new owner or operator with the specific transfer date of the Order's obligations, coverage, and liability is submitted to Ecology per condition A.2.;
 - b. A copy of this Order is provided to the new owner or operator; and

- c. If Ecology does not notify the new Applicant that this Order must be modified to complete the transfer.

B. Water Quality Conditions:

1. This order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-210(1)(e).
 - The area of mixing established for marine waters is a 150 foot radius surrounding the in-water activity. Turbidity occurring outside that zone that is more than 5 nephelometric turbidity units (NTU) over background when the background is 50 NTU or less, or a 10% increase in turbidity when the background turbidity is more than 50 NTU is a violation of the turbidity water quality standard.
 - Visible turbidity anywhere at 150 ft point of compliance from the activity and/or the disposal location shall be considered to be an exceedance of the standard.

C. Water Quality Monitoring

1. The Applicant shall submit a water quality monitoring plan to Ecology per Condition A2 at least 14 days prior to the pre-dredge meeting (Condition D.2). This plan must be approved by Ecology prior to any in-water work. The plan shall include at a minimum the following information:
 - a. Name and contact information of the person or firm responsible for monitoring;
 - b. Map of sample locations including background, an early warning point and point of compliance (150 ft) at or near the surface, midway, and bottom depths. For this project the point of compliance is a radius of 150 feet from the activity causing the turbidity exceedance;
 - c. Parameter(s) to be monitored: turbidity;
 - d. Sample method;
 - e. Frequency; and
 - f. Steps to be taken if monitoring results indicate an exceedance has occurred. The amount of the exceedance and the reason for the exceedance shall also be reported.
2. Turbidity monitoring reports shall be sent weekly to the 401/CZM Federal permit coordinator. The permit coordinator shall be contacted within 24 hours if an exceedance occurs.

D. Pre-Dredge Requirements:

1. Prior to each dredging cycle, the Applicant shall contact the DMMP 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. This area ranks moderate in potential for contamination and the current recency determination extends through February 2017.

2. A pre-dredge meeting is required to be convened at least one month prior to the start of dredging for each dredging season. All required plans shall be submitted to Ecology to the 401/CZM Federal permit coordinator at the address shown in Condition A2 for review and approval at least 2 weeks prior to the pre-dredge meeting. Required plans shall include, as appropriate to the disposal options being proposed, the following:
 - a. Dredge and Disposal plan
 - b. Transload plan
 - c. Water Quality Monitoring plan
 - d. Spills Prevention, Control, and Countermeasures Plan

E. Dredging:

1. All dredging is to be done using only mechanical bucket dredging techniques. **Use of any other type of dredge techniques requires preapproval from Ecology.**
2. 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.
3. Dredged material shall not be stockpiled on a temporary or permanent basis below the ordinary high water line.
4. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.
5. The scow shall not be overfilled to the point where dredge material overtops the sidewalls.
6. Caution shall be used when placing material from the bucket into the scow to limit splash and prevent spillage.
7. The Dredge operator shall pause the bucket at the surface, after its ascent through the water column, to minimize turbidity by allowing free water to drain from the bucket prior to swinging the bucket to the bottom dump scow.

F. Disposal:

1. All dredged material will be disposed of at an upland location. The Applicant must provide transloading plans as per condition D2. **Dredging may not proceed prior to obtaining an Ecology approved transload and disposal plans.** Transloading plans must contain, at a minimum, the following information:

- a. The location where transloading will occur
- b. BMPs to prevent material (sediment or untreated dredge return water) from entering into the waterway
- c. Stormwater BMPs
- d. Plans for the treatment of, or containment and disposal of water associated with the dredge material.
- e. The identification of the final destination of the sediment.

G. Post-Dredge Requirements:

1. Post-dredge bathymetric surveys must be submitted to Ecology within one week of the completion of the dredging unless otherwise approved by Ecology.

H. Timing Requirements:

1. All in-water work shall be completed by the work window identified in the most current HPA issued for this project. Any project change that requires a new or revised HPA should also be sent to Ecology for review.
2. This Order shall remain in effect for a period of 5 years from date of issuance.

I. 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.

J. 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) 407-6165.
 - 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 Hearings 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 all 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

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

CONTACT INFORMATION

Please direct all questions about this Order to:

Laura Inouye
Department of Ecology
Headquarters
PO Box 47600
Olympia WA 98504-7600
(360)-407-6165
Lino461@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 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 173.204 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

Dated this 30th day of June, 2015 in Olympia, Washington



Brenden McFarland, Section Manager
Environmental Review and Transportation
Shorelands and Environmental Assistance Program
Headquarters

Attachment A
Statement of Understanding
Water Quality Certification Conditions

Port of Anacortes Cap Sante Marina M, N, and O Docks Maintenance Dredging
Water Quality Certification Order No. 11633
and
Corps Reference No. NWS-2014-1008

I, _____, state that I will be involved as an agent or contractor for The Port of Anacortes in the site preparation and/or construction of the Port of Anacortes Cap Sante Marina M, N, and O Docks Maintenance Dredging located in Anacortes, Skagit County, Washington. I further state that I have read and understand the relevant conditions of Washington Department of Ecology Water Quality Certification Order No. 11633 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

Phone

Company

