



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000
June 27, 2008

REGISTERED MAIL
RB 670 357 334 US

Graham Anderson
Port of Everett
PO Box 538
Everett, WA 98206

RE: Water Quality Certification Order #5693 for U.S. Army Corps of Engineers (Corps) Reference #NWS-2007-1761-NO to rebuild 500 linear feet of shore protection, demolish an existing kayak launch ramp, and attach a 100 square foot kayak float to an existing float in the Snohomish River at Everett, Snohomish County, Washington.

Dear Mr. Anderson:

On September 7, 2007, you submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act (CWA) for the proposed project. The project proposes to rebuild 500 linear feet of shore protection, demolish an existing kayak launch ramp, and attach a 100 square foot kayak float to an existing float. The U.S. Army Corps of Engineers issued a joint public notice for an individual Section 404 and Section 10 Permit on May 2, 2008, for the proposed project.

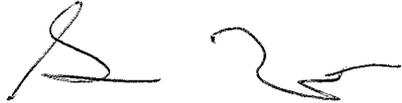
On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the JARPA and the May 2, 2007, public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

On May 5, 2008, Port of Everett submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the Port of Everett's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon the Port of Everett's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.

Graham Anderson
June 27, 2008
Page 2 of 2

If you have any questions, please contact Lori Enlund at 425-649-7271,
LENL461@ecy.wa.gov. The enclosed Order may be appealed by following the
procedures described in the Order.

Sincerely,



Geoff Tallent
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:lce:cja
Enclosure

cc: Jonathan Smith, U.S. Army Corps of Engineers
Laura Arber, Washington Department of Fish and Wildlife
Martha Jensen, U.S. Fish and Wildlife Service

e-cc: Tim Schlender – HQ
ecyrefedpermits@ecy.wa.
David Pater, Ecology

**IN THE MATTER OF GRANTING A
WATER QUALITY
CERTIFICATION TO
Port of Everett**
in accordance with 33 U.S.C. 1341
(FWPCA § 401), RCW 90.48.120, RCW
90.48.260 and Chapter 173-201A WAC

) **ORDER #5693**
) **Corps Reference No. NWS-2007-504-NO**
) Rebuild 500 linear feet of shore protection,
) demolish an existing kayak launch ramp, and
) attach a 100 square foot kayak float to an
) existing float, Snohomish River, Everett,
) Snohomish County, Washington.
)

TO: Graham Anderson
Port of Everett
PO Box 538
Everett, WA 98206

A joint public notice was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on May 23, 2007. On September 7, 2007, Port of Everett submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification.

The proposed project entails: rebuilding 500 linear feet of shore protection, demolishing an existing kayak launch ramp, and attaching a 100 square foot kayak float to an existing float. The project is located in the Snohomish River, Everett, Snohomish County, Washington, Section 18, Township 29N North, Range 5 East, WRIA #7.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, 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, 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 not violate 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:

- A1. For purposes of this Order, the term "Applicant" shall mean Port of Everett, and their 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: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #5693 and Corps Reference #NWS-2007-1761-NO.
- A3. Work authorized by this Order is limited to the work described in the JARPA and received by Ecology on September 07, 2007 and Shoreline Planting Plan received by Ecology on May 20, 2008. 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. This Order shall be rescinded if the Corps does not issue Section 404 and Section 10 permits.
- A6. This Order does not exempt, and is provisional upon, compliance with other statutes and codes administered by federal, state, and local agencies.

- A7. 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.
- A8. 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.
- A9. 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.
- A10. 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.
- A11. 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.
- A12. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.
- B. Water Quality Conditions:**
- B1. Per the state water quality standards Chapter 173-201A-200 WAC the Snohomish river use is designated as "spawning and rearing" and the criteria of that designation apply to this project, except as specifically authorized by this Order.
- B2. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-200(e)(i).

- B3. Turbidity shall be assessed and recorded at a minimum of every four (4) hours during daylight hours when in-water activities are being conducted. Monitoring points shall be at the point of compliance as specified in WAC 173-201A-200(1)(e)(i), which allows a 300 feet temporary area of mixing downstream from the in-water activities. The Applicant must monitor the water for any visual signs of turbidity at the point of compliance.
- a. For this project, the following is considered to be an exceedance of the water quality turbidity standard:
 - i. If project-related turbidity is visible 300 feet downstream from the in-water activity.
- B4. If water quality exceedances are observed outside of the point of compliance, work shall cease immediately and the Applicant or the contractor shall assess the cause of the water quality problem and take immediate action to stop, contain, correct the problem and/or prevent further water quality turbidity exceedances. If an exceedance occurs, the Applicant shall follow the protocols and notification procedures below:
- a. Notification of exceedances that are detected through water quality monitoring shall be made to Ecology within 24 hours of occurrence. Notification shall be made per Condition A2 above. The Applicant shall, at a minimum, provide Ecology with the following information:
 - i. A description of the nature and cause of non-compliance, including the quantity and quality of any unauthorized discharges;
 - ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance; and
 - iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
 - iv. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, photographs, and any other pertinent information.
- B5. Mitigation and/or additional monitoring may be required if water quality standards are not met.

C. Construction Conditions:

- C1. Work shall be accomplished per the *Shoreline Planting Plan for the 10th Street Marine Park*, dated December 18, 2007, prepared by Pentec Environmental, except as modified by this Order.

- C2. Construction stormwater, sediment, and erosion control BMPs (*e.g.*, filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
- C3. All exposed soils shall be stabilized by suitable and timely application of BMPs.
- C4. All temporary and permanent erosion control BMPs shall be maintained and repaired as needed to assure continued performance of their intended function.
- C5. All temporary BMPs and accumulated sediments shall be removed after final site stabilization.
- C6. All work above the MHHW shall be performed in the dry.
- C7. Any manmade debris that has been deposited below the Ordinary High Water Line within the construction work area shall be removed and disposed of upland in a manner such that it does not enter waters of the state.
- C8. All construction debris shall be temporarily stored upland of the ordinary high water mark so that it cannot enter a waterway or cause water quality degradation to state waters. Any temporary upland stockpile area shall be set back approximately 100 feet from the top of the bank, unless otherwise approved by Ecology.
- C9. In order to prevent contamination of surface water all machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology. Equipment that is not in use shall be stored in the existing paved parking area.
- C10. 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.
- C11. For work that cannot be done in the dry, containment booms shall be deployed around the existing riprap in the project area to contain any potential debris or petroleum sheens released to the waterway as the result of removal and placement of riprap, placement of sand/gravels and riparian plantings.
- C12. The Applicant shall have a boat available on site at all times to retrieve debris from the water.

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 take appropriate measures 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 401/CZM Federal Project Manager at (425) 649-7271 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. This Order is valid until all compliance requirements in this document have been met.
- E2. In-water work shall be subject to timing limitations imposed by WDFW. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology and/or WDFW that fisheries resources may be adversely affected.

F. Reporting and Notification Requirement Condition

- F1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of construction and within 14 days after completion of construction at the project site. Notification, referencing Corps Reference #NWS-2007-1761-NO, Order #5693, can take place by telephone to (425) 649-7271 or (425) 649-7000, fax to (425) 649-7098, or in writing.

G. Appeal Process

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:

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

In addition, please send a copy of your appeal to:

Federal Permit Appeals Coordinator
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

For additional information: Environmental Hearings Office Website: <http://www.eho.wa.gov>

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 June 27, 2008 at Bellevue, Washington.



Geoff Tallent, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A

**Port of Everett
10th STREET MARINE PARK
Water Quality Certification Order #5693**

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

I have read and understand the conditions of Order #5693 Section 401 Water Quality Certification for the Port of Everett 10th Street Marine Park Project. I have also read and understand all permits, plans, documents, and approvals associated with the Port of Everett 10th Street Marine Park Project referenced in this Order.

Signature

Date

Title

Company