



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

November 4, 2009

CERTIFIED MAIL

7009 1410 0002 4050 6690

Morgan Rohrbach
Puget Sound Restoration Fund
590 Madison Ave N
Bainbridge Island, WA 98110

RE: Water Quality Certification Order #7082 for U.S. Army Corps of Engineers Public Notice #NWS-2009-228, Bloedel Community Shellfish Farm Project, in the City of Bainbridge Island, Kitsap County, Washington

Dear Ms. Rohrbach:

On November 7, 2009, the Puget Sound Restoration Fund submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed Bloedel Community Shellfish Farm project.

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.

In order to evaluate the effects of the project, the Puget Sound Restoration Fund shall provide Ecology with results of annual eelgrass surveys (including any change in size of native eelgrass patches). Additionally, if any water quality monitoring is conducted in conjunction with this project, these results shall be submitted to Ecology.

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, Unit Supervisor
Northwest Regional Office
Shorelands and Environmental Assistance Program

ES:rrp:cja
Enclosure



cc: Pam Sanguinetti, U.S. Army Corps of Engineers
Chris Waldbillig, Washington Department of Fish and Wildlife
Lindie Schmidt, Washington Department of Natural Resources

e-cc: Barbara Nightingale – NWRO
Lori LeVander – NWRO
Loree' Randall – HQ
Raman Iyer – NWRO
Greg Combs, Washington State Department of Health greg.combs@doh.wa.gov
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A) ORDER #7082
WATER QUALITY) Corps Reference #NWS-2008-228
CERTIFICATION TO) Bloedel Community Shellfish Farm Project; Port
Puget Sound Restoration Fund) Madison Sound, Kitsap County, Washington.
in accordance with 33 U.S.C. 1341)
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: Morgan Rohrbach
Puget Sound Restoration Fund
590 Madison Ave N
Bainbridge Island, WA 98110

On July 1, 2009, the Puget Sound Restoration Fund submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on June 18, 2008.

The proposal is to establish a 1-acre community shellfish farm to grow shellfish to sell at local markets and to spur water quality restoration by engaging local residents.

The project is located on Bloedel Reserve tidelands, at 7571 NE Dolphin Drive, Bainbridge Island, Kitsap County, Port Madison Sound, Washington, Section 34, T. 26 N., R. 2E., WRIA 15.

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, 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:

- A1. For purposes of this Order, the term "Applicant" shall mean Puget Sound Restoration Fund 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: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #7082 and Corps Reference #NWS-2009-228.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on July 1, 2009. 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 U.S. Army Corps of Engineers does not issue an individual Section 404 permit.

- A6. 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.
- A7. 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.
- A8. 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.
- A9. 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.
- A10. 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.
- A11. 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 Condition:

- B1. Port Madison Sound is classified as Extraordinary Quality for Aquatic Life Turbidity Criteria in Marine Water, and the criteria of that class apply except as specifically modified by this Order. This Order does not authorize a temporary turbidity exceedance beyond the limits established in WAC 173-201A-210(1)(e)(i) which allows a 150-foot temporary area of mixing for turbidity resulting from disturbance of in-place sediments in Port Madison Sound.

C. Conditions for In-Water Activities:

- C1. Construction stormwater, sediment, and erosion control best management practices (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.
- C2. 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.
- C3. All manmade debris that has been deposited below the Ordinary High Water Line within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Concrete blocks, metal debris, cables, and other debris in the construction work corridor that have washed into marine areas shall be removed from the project area.
- C4. Project activities shall be conducted to minimize siltation of the beach area and seabed.

D. Operational Conditions:

- D1. In areas with kelp, native eelgrass, or macroalgae populations, vessel operation shall be conducted so as to prevent propeller-related damage to vegetation.
- D2. A boat landing zone shall be identified in order to prevent impact to native eelgrass beds or other fish and wildlife habitat. The location of the landing zone shall be identified in the uplands so that it is visible to boats arriving at the site.
- D3. The Applicant shall exclude forage fish spawning areas from shellfish culture activities in order to avoid impacts to these resources.
- D4. The Applicant shall observe a 10-foot buffer from all native eelgrass and macroalgae in order to avoid impacts to these resources.
- D5. The Applicant shall not conduct any planting or harvesting work when the shellfish farm area is inundated by tidal waters.
- D6. No processing of the shellfish shall occur on site, except for the sorting or culling of the cultured shellfish and the washing or removal of surface materials or organisms.
- D7. Shellfish rinsing in seawater shall be completed using BMPs in order to minimize turbidity.

- D8. No mechanical equipment, with the exception of boats used to deliver aquaculture gear and seed product, shall be used in the installation of the shellfish bags or the harvesting and washing of the shellfish. All work is to be performed by hand.
- D9. All gear shall be adequately secured to the substrate and checked at least every two weeks and after storm events in order to ensure that aquaculture equipment is not released into the environment.
- D10. No fertilizers, pesticides, herbicides, antibiotics, vaccines, growth stimulants, anti-fouling agents, or other chemicals shall be utilized in operation of the shellfish farm.
- D11. The community shellfish farm shall be limited in size to a maximum of 1 acre.
- D12. 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.
- D13. Reporting: The Applicant shall submit to Ecology (see A2) an annual report by July 31st of each year that includes the following information:
 - a. Results of the annual survey and assessment of the project, including the overall project status and any problems encountered and how these were addressed.
 - b. Lessons learned from the project.
 - c. Status of outreach activities.
 - d. Any impacts to forage fish spawning (e.g., herring).
 - e. Plans for the next year of operations.
- D14. All bags and other equipment shall be removed from the site upon cessation of shellfish farm operations.

E. Emergency/Contingency Measures:

- E1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- E2. 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.
- E3. 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.

- E4. 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) 649-7129 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.

F. Timing Requirements

- F1. This Order expires five (5) years from the date of issuance.

G. Reporting and Notification Requirement Conditions

- G1. 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-2009-228, Order #7082 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

H. Appeal Process:

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.

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
Northwest Regional Office
Attn: Rebekah Padgett
3190 160th Avenue SE
Bellevue, WA 98008

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 November 4, 2009 at Bellevue, Washington.



Erik Stockdale, Unit Supervisor
Northwest Regional Office
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A

**PUGET SOUND RESTORATION FUND
BLOEDEL COMMUNITY SHELLFISH FARM PROJECT
Water Quality Certification Order #7082**

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

I have read and understand the conditions of Order #7082 Section 401 Water Quality Certification for the Puget Sound Restoration Fund Bloedel Community Shellfish Farm 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