



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

January 20, 2010

Mr. Graham Anderson
Port of Everett
P.O. Box 538
Everett WA 98206

RE: Water Quality Certification - Order #7310/Corps Public Notice # NWS-2009-01245-
Maintenance dredging of 32,000 cubic yards of sediment from the Port of Everett 10th
Street Boat Launch in Snohomish County, Washington

Dear Mr. Anderson:

The above-referenced public notice for proposed work in waters of the state has been reviewed in accordance with all pertinent rules and regulations. On behalf of the State of Washington, we certify that the work proposed in the public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This certification is subject to the conditions contained in the enclosed Order and may be appealed by following the procedures described in the Order.

If you have any questions concerning the content of this letter, please contact Helen Pressley at (360) 407-6076.

Sincerely,

A handwritten signature in black ink, appearing to read "Brenden McFarland".

Brenden McFarland, Section Manager
Shorelands & Environmental Assistance Program
Headquarters Office - Ecology
State of Washington

Enclosure

By certified mail 7009 1410 0002 4001 1194



Mr. Graham Anderson
January 20, 2010
Page 2 of 2

cc: WA Department of Natural Resources, Aquatic Lands
Performance Marine
Old Castle Glass
Snohomish County Parks and Recreation Dept
City of Everett Parks and Recreation Department

ecc: Loree' Randall, Ecology
Helen Pressley, Ecology
Laura Inouye, Ecology
David Pater, Ecology, NWRO
Laura Arber, WDFW
Erin Legge, Corps
Ecyrefedpermits@wa.gov.

IN THE MATTER OF GRANTING A) ORDER #7310
WATER QUALITY) Corps Reference No. NWS -2009-01245
CERTIFICATION TO) Maintenance dredging of 32,000 cubic yards of
Port of Everett) sediment from the Port of Everett 10th Street
in accordance with 33 U.S.C. 1341) Boat Launch in Snohomish County, Washington
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

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

On October 13, 2009 the Port of Everett submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on December 15, 2009.

Work to be done includes the dredging of 32,000 cubic yards (cy) of sediment from approximately 138,600 square feet of river bottom. Dredging will be done to -10 feet Mean Lower Low Water (MLLW) plus 2 feet of overdredge. This work will be completed with a clamshell bucket dredge. The timeline for the work to be completed is within 3 to 4 weeks.

The purpose of the work is to maintain a navigable channel and boat launching facility.

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:

1. For purposes of this Order, the term "Applicant" shall mean the Port of Everett and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Headquarters Office, Attn: 401/CZM Federal Permit Coordinator, P.O. Box 47600 Olympia, WA 98504-7600 or hpre461@ecy.wa.gov. Any submittals shall reference Order #7310 and Corps Reference # NWS-2009-01245.
3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resource Permit Application (JARPA) received by Ecology on October 13, 2009. The Applicant will be out of compliance with this Order and must submit an updated JARPA if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
4. 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.
5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual 404 or Section 10 permit for the project.
6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers, construction lead workers, and state and local government inspectors.

7. The Applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.
8. 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.
9. 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.
10. 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.
11. 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:

1. This order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-210(1)(e)(i)(D). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup or surface waters or sediments occurring as a result of project construction or operations.

C Dredging and Disposal:

1. All dredging is to be done using a clamshell bucket dredge. Use of any other type of dredge will require prior approval from Ecology.
2. All dredged material will be transported to the Puget Sound Dredged Disposal Analysis non-dispersive or dispersive open-water disposal site in Port Gardner Bay.
3. All debris (larger than 2 feet in any dimension) shall be removed from the dredged sediment prior to disposal. Similar sized debris found floating in the dredging or disposal area shall also be removed.

4. 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.
5. Dredged material shall not be stockpiled on a temporary or permanent basis below the ordinary high water line.
6. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.
7. A pre-dredge meeting is required to be convened prior to the start of dredging. A **Dredging Plan** is required and shall be submitted to Ecology to the 401/CZM Federal Permit Coordinator at the address shown in Condition A2 for review and approval 2 weeks prior to the pre-construction meeting.
8. Prior to each dredging cycle, the Applicant shall contact the PSDDA 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 recency determination extends to October 2014. Contact the DMMO for a possible extension of up to 2 years.

D. 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. Continuing this project beyond the 5 year term of this Order will require separate certifications every 5 years.

E. 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.

F. 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 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) 407-6076.
 - f. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken 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.

G. 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
Shorelands and Environmental Assistance Program
Attn: Helen Pressley
P.O. Box 47600
Olympia WA 98504-7600

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.

*Order #7310, Corps No.NWS 2009-01245
Port of Everett 10th St Boat Launch
January 20, 2010
Page 7 of 7*

DATED January 20, 2010 at Lacey, Washington.

A handwritten signature in black ink, appearing to read 'B McFarland', with a horizontal line extending to the right from the end of the signature.

Brenden McFarland, Section Manager
Shorelands & Environmental Assistance Program
Headquarters Office – Ecology
State of Washington

ATTACHMENT A

**Port of Everett
10th St Boat Launch Maintenance Dredge
Water Quality Certification Order #7310**

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

I have read and understand the conditions of Order #7310 Section 401 Water Quality Certification for the **10th St Boat Launch Maintenance Dredge Project**. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this order.

Signature

Date

Title