



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000
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February 28, 2012

Michael Durland
Deer Harbor Boatworks
PO Box 203
Deer Harbor, WA 98243

RE: Water Quality Certification Order #9006 for U.S. Army Corps of Engineers Public Notice #NWS-2010-479, Deer Harbor Boatworks Marina Maintenance Project, in Deer Harbor, San Juan County, Washington

Dear Mr. Durland:

On May 27, 2011, Deer Harbor Boatworks 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 Deer Harbor Boatworks Marina Maintenance 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.

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
Shorelands and Environmental Assistance Program

ES:rrp:cja

Enclosure

By certified mail: 7011 0470 0003 3720 9411

cc: Susan Powell, U.S. Army Corps of Engineers
Terry Carten, Washington Department of Natural Resources
Laura Arber, Washington Department of Fish and Wildlife
William Vogel, U.S. Fish and Wildlife Service
e-cc: Bob Fritzen – BFO
Loree' Randall – HQ
Raman Iyer – NWRO
ecyrefedpermits@ecy.wa.gov



IN THE MATTER OF GRANTING A) ORDER #9006
WATER QUALITY) Corps Reference #NWS-2010-479
CERTIFICATION TO) Deer Harbor Boatworks Marina Maintenance
DEER HARBOR BOATWORKS) Project; Deer Harbor, in Deer Harbor, San Juan
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: Michael Durland
Deer Harbor Boatworks
PO Box 203
Deer Harbor, WA 98243

On May 27, 2011, Deer Harbor Boatworks 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 December 23, 2011.

The marina maintenance proposal includes:

- Dredging of up to 114 cubic yards over a 700-square-foot area
- Maintenance dredging of up to 10 cubic yards every two years for 10 years
- Placement of large rock along the eroding edge of the boat ramp
- Bank stabilization, to include placement of tree root balls, filling of gaps with rocks and woody debris, placement of dredge spoils and soil, and planting of native vegetation
- Repair of flotation on the floating dock

The project is located at 155 Channel Road, in Deer Harbor, King County, Washington, Deer Harbor, Section 7, T. 36 N., R. 2W., WRIA 2.

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:

- A1. For purposes of this Order, the term "Applicant" shall mean Deer Harbor Boatworks 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 #9006 and Corps Reference #NWS-2010-479.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on May 27, 2011. 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. Deer Harbor is classified as "Extraordinary Quality" and the criteria of that class apply except as specifically modified by this Order. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-210(1)(e)(i).
- B2. Turbidity shall be visually assessed and recorded at a minimum of every four (4) hours during periods of active in-water work. Monitoring points shall be at the point of compliance as specified in WAC 173-201A-210(1)(e)(i), which allows a 150-foot temporary area of mixing for turbidity from the point of disturbance. A turbidimeter is recommended, however, visual gauging of turbidity is acceptable.

For this project, the following is considered to be an exceedance of the standard:

- Project-related turbidity visible at 150 feet from the discharge point, OR
 - 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or more than a ten (10) percent increase in turbidity when the background turbidity is more than 50 NTU, at 150 feet from the project site when a turbidimeter is used.
- B3. If an exceedance occurs, the Applicant shall modify the activity causing the problem and continue to monitor every four (4) hours. If exceedances occur with two (2) consecutive measurements (four (4) hours apart), the applicant shall stop the activity causing the turbidity until the problem is resolved. The Applicant shall notify Ecology per condition A2 within 24 hours of any exceedances.
- B4. If no exceedances are detected, results of water quality monitoring conducted per Condition B2 shall be forwarded to Ecology on a monthly basis in accordance to Condition A2.

C. Conditions for Construction Activities:

General Conditions:

- 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. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- C3. 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.
- C4. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
- C5. 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.
- C6. 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.

- C7. 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 rubble, metal debris, and other debris in the construction work corridor that have washed into marine areas shall be removed from the project area.
- C8. Project activities shall be conducted to minimize siltation of the beach area and bed.
- C9. All in-water work shall occur during low tide in order to minimize turbidity and protect water quality.
- C10. The Applicant shall use geotextile fabric to contain any dredged material or soil used in stabilizing the bank in order to minimize turbidity and protect water quality.
- C11. The Applicant shall operate the excavator from the uplands or concrete boat ramp. If the excavator is operated from the beach, geotextile fabric, steel plates, or other types of protective construction matting shall be placed in order to minimize impacts.
- C12. Floats from the floating dock shall be completely removed from the water and repairs conducted on the upland.
- C13. Floatation for the structure shall be fully enclosed and contained to prevent the breakup or loss of the floatation material into waters of the state.
- C14. Dewatering water shall not be discharged to Deer Harbor or conveyed to surface waters unless it meets Surface Water Quality Standards (Chapter 173-201A WAC) for pollutants of concern.
- C15. All equipment associated with dewatering activities shall be properly operated and maintained.
- C16. All excess dredged material shall be placed into a truck and transported to an upland site.
- C17. Dredging shall be confined to the footprint illustrated in the project plans.
- C18. 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.
- C19. Dredged material shall not be stockpiled on a temporary or permanent basis below the ordinary high water line.
- C20. If a turbidity curtain is utilized, it shall be deployed and maintained in a functional manner to contain suspended sediments at the work site during in-water work.

- C21. Geotextile fabric shall be placed over the bank stabilization area if work cannot be completed between tidal ranges in order to minimize turbidity.
- C22. Planting of native vegetation along the shoreline shall occur within a week of completing construction activities.

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) 649-7129 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.

E. Timing Requirements

- E1. This Order expires ten (10) years from the date of issuance of the Corps permit.

F. Reporting and Notification Requirement Conditions

- F1. The Applicant shall provide to Ecology's 401/CZM Federal Permit Manager a copy of the final Corps permit within 2 weeks of receipt of the permit. A copy shall be submitted per condition A2 above.
- F2. 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-2010-479, Order #9006 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.
- F3. The Applicant shall submit per Condition A2 a written status report within 30 days of each dredging effort (every two [2] years) until this Order expires. The status reports shall include the amount of material removed and documentation regarding the disposal of the dredge spoils.

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



Erik Stockdale, Unit Supervisor
Wetlands/401 Unit
Shorelands and Environmental Assistance Program
Northwest Regional Office

Feb. 28, 2012

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ATTACHMENT A

**DEER HARBOR BOATWORKS
MARINA MAINTENANCE PROJECT
Water Quality Certification Order #9006**

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

I have read and understand the conditions of Order #9006 Section 401 Water Quality Certification for the Deer Harbor Boatworks Marina Maintenance 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