STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

April 12, 2011

Port of Tacoma
ATTN: Mr. Robert Brenner
PO Box 1837
Tacoma, WA 98401-1837

RE: Water Quality Certification Order No. **8406** for Corps Public Notice No. **NWS-2010-1052-WRD** for the replacement and reconfiguration of a dock float system, Foss Waterway, Puget Sound, Pierce County, Washington

Dear Mr. Brenner:

On August 11, 2010, the Port of Tacoma 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 replacement and reconfiguration of the dock float system at an existing boat repair and storage facility within the Port of Tacoma. The U.S. Army Corps of Engineers issued a joint public notice on January 28, 2011, for the proposed 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 Lori Ochoa at (360) 407-6926. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Perry J. Lund
Shorelands and Environmental Assistance Program
Southwest Regional Office

Enclosure

By Certified Mail 7009 2820 0001 7161 1722

cc: Olivia Romano, Corps of Engineers
Chris Waldbillig, WDFW
John Wolfe, Port of Tacoma
Charla Heutinck, City of Tacoma

e-cc: ecyrefedpermits@ecy.wa.gov
Loree' Randall, Ecology HQ
Alex Callender, Ecology SWRO/SEA
Deb Cornett, Ecology SWRO/WQ
Lori Ochoa, Ecology SWRO/SEA

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Port of Tacoma in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	)))))))	**ORDER # 8406** **Corps Reference No. NWS-2010-1052-WRD** For the replacement and reconfiguration of the dock float system at the Port of Tacoma, Foss Waterway, Puget Sound, Pierce County, Washington

TO: Port of Tacoma
ATTN: Mr. Robert Brenner
PO Box 1837
Tacoma, WA 98401-1837

On August 11, 2010, the Port of Tacoma submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice for a proposed water quality certification from Ecology was distributed by the U.S. Army Corps of Engineers for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on January 28, 2011.

The proposed dock reconfiguration will realign the dock float system to improve access to the boat lift and improve dock usability. The existing dock float system consists of approximately 4,263 square feet of treated wood floats supported by 12-inch galvanized steel pile. The new re-alignment and replacement work will consist of:

- Replacement of approximately 2760 square feet of existing treated wood solid-deck floats with 2790 square feet of pre-constructed grated-deck synthetic floats,
- Removal of six 12-inch galvanized steel piling,
- Placement of ten new steel piles,
- Digging approximately 386 linear feet of trench in uplands between the street and the dock to allow for the placement of power and sewer utilities

The project is located at an existing boat repair and storage facility within the Port of Tacoma at 820 East D Street in Tacoma, Pierce County, Washington; Southwest Quarter of Section 4, Township 20 North, Range 3 East, WRIA 10, Puyallup-White Watershed.

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. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 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:

1. For purposes of this Order, the term "Applicant" shall mean the Port of Tacoma and its agents, assignees and contractors.

2. For purposes of this Order, all submittals required by its conditions shall be sent either by regular mail to Ecology's Southwest Regional Office, Attn: Federal Permit Manager, SEA Program, P.O. Box 47775, Olympia, WA 98504-7775 or via e-mail to loch461@ecy.wa.gov. Any submittals shall reference Order No. **8406** and Corps No. **NWS-2010-1052-WRD**.

3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on August 11, 2010. 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.

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 a Section 404 permit.

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 and lead workers, and state and local government inspectors.

7. 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.

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. 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.

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 permit, plans, documents, and approvals. These statements shall be provided to Ecology before construction begins at the project site.

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 the terms of this Order.

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).

2. During and immediately after project construction, the Applicant or their contractor shall monitor for turbidity discharges at the point of compliance as specified in WAC 173-

201A-210(1)(e)(i). Monitoring points shall be at the point of compliance as specified in WAC 173-201A-210 (1)(e)(i), which allows a radius of 150-foot temporary area of mixing from the point of the in-water activities. A turbidimeter is recommended, however, visual gauging of turbidity is acceptable.

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

   i. Project-related turbidity visible 150 feet from the in-water activity; OR,

   ii. 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or more than a twenty (20) percent increase in turbidity when the background turbidity is more than 50NTU, at the point of compliance when a turbidimeter is used.

3. 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.

4. Mitigation and/or additional monitoring may be required if water quality standards are not met.

C. Timing:

1. This Order expires five (5) years from the date of issuance of the Corps permit.

2. In-water work shall be subject to the timing limitations imposed by the most current Hydraulic Project Approval (HPA) issued by Washington Department of Fish and Wildlife (WDFW) for this project.

D. **Notification Requirements:**

1. The Applicant shall provide a copy of the final Corps Permit to Ecology's Southwest Regional Office Federal Permit Manger, in accordance with condition A.2 above, within two (2) weeks of receipt of the permit.
2. Written notification (FAX, e-mail, or mail) shall be made to Ecology's Southwest Regional Office Federal Permit Manager in accordance with condition A.2 above for the following activities:
   a. At least ten (10) days prior to the onset of in-water work in each construction season.
   b. Within ten (10) days after completion of construction for each project season.
   c. Immediately following a violation of the state water quality standards or any condition of this Order.
   d. If project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit a written construction status report. Status reports shall be submitted every 12 months thereafter until project construction is complete.

E. **Conditions for In-Water and Over-Water Construction Activities:**

General Conditions:

1. All work in and near the water shall be done so as to minimize turbidity, erosion, and other water quality impacts.
2. Construction stormwater, sediment, and erosion control Best Management Practices (BMP's) suitable to prevent exceedances of state water quality standards shall be in place at each boat ramp before starting maintenance activities and shall be maintained throughout the cleaning and maintenance of the boat ramp.
3. Sediment and erosion control measures shall be inspected and maintained throughout project construction.
4. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in order to prevent contamination to surface waters.
5. No existing shoreline material (i.e., logs, rocks, gravel cobbles, woody debris or other bed material) shall be relocated or used as bulkhead armor, as fill, or for any other purpose.
6. Project activities shall be conducted to minimize siltation of the beach area and bed.
7. Turbid water generated from cleaning and maintenance activities, including turbid dewatering water, shall not be discharged directly into waters of the state. Turbid water shall be pumped to an upland area to allow the turbid water to settle. The discharge from the upland areas shall meet water quality criteria at the point of discharge into surface waters and/or wetlands.
8. Dewatering water that is not turbid may be discharged directly to surface waters and/or wetland provided that: a) waste water containing raw concrete or other harmful material has not been in contact with the water to be discharged, and b) the water will meet all of the water quality standards at the point of discharge.

F. Work In Marine Waters

1. The Applicant shall use tarps or other containment methods when cutting or drilling over water to prevent debris, sawdust, and other materials from entering the water.
2. During construction, the Applicant shall have a boat available on site at all times to retrieve any debris that enters the water.
3. All construction debris, excess sediment, and other solid waste material shall be properly managed and disposed of in an upland disposal site so that it cannot cause water quality degradation to state waters.
4. The Applicant shall operate the barge(s) and tug in deep water so as to minimize the near shore propeller wash impacts such as suspension of near shore sediments.
5. Barges shall not be allowed to ground-out during construction.

Piling Removal:

6. Six galvanized steel piling will be removed from the project area.
7. Piling removal shall not be allowed to damage or disturb the existing grout mat.
8. All piling to be removed from within the footprint of the grout mat shall be cut off rather than vibrated out to ensure mat integrity and then covered with fish-mix. The fish mix shall be applied directly to the substrate and shall not be allowed to fall through the water column.
9. The remaining piling to be removed may be vibrated out or cut off and covered with fish-mix as described above.
10. All piling shall be removed immediately from the water into a barge or onto uplands. The pile shall not be shaken, hosed-off, or left hanging to drip.
11. The work surface of the barge deck or the upland area shall include a containment basin for the piles and any sediment removed during extraction of the piling. Basins may be constructed of durable plastic sheeting with sidewalls supported by hay bales or support structure to contain all sediment.
12. The extracted piles shall be disposed of at an approved upland disposal site.

Pile Driving:

13. A total of ten new steel piling shall be installed. The new piling will consist of six 12-inch and four 18-inch steel pile.
14. No new piling shall be installed within the footprint of the existing grout mat.
15. New piling will be installed using a vibratory hammer.
16. If the pile driver will utilize spud anchors during pile installation, sand/fish mix will be placed in the depressions left by the anchors.

G. Emergency/Contingency Measures:

1. The applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
2. 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.
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.
4. Any work that is out of compliance with the provisions of this Order, or any discharge of oil, fuel, or chemicals into state waters, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, the operator 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. 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.
    d. 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 Southwest Regional Office Federal Permit Manager at (360) 407-6926 or (360) 407-6300.
    e. 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 taken to prevent recurrence, results from 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.

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 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:

Lori Ochoa
Department of Ecology
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
loch461@ecy.wa.gov

MORE INFORMATION

Pollution Control Hearings Board Website
www.eho.wa.gov/Boards_PCHB.aspx

Chapter 43.21B RCW - Environmental 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 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

12 APRIL 2011

Perry J Lund, Unit Manager
Shorelands and Environmental Assistance Program
Southwest Regional Office

Date

Attachment # A

Port of Tacoma
East D Street Dock Reconfiguration
Order # **8406**

Statement of Understanding
Water Quality Certification Conditions

I, _____, state that, I will be involved as an agent or contractor for the Port of Tacoma in the replacement and reconfiguration of the dock float system within the Foss Waterway of Puget Sound at an existing boat repair and storage facility, at 820 East D Street, Port of Tacoma, Pierce County, Washington. I further state that I have read and understand the relevant conditions of the Washington Department of Ecology Water Quality Certification Order **#8406** 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