



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

September 20, 2011

Olin Nichols
PO Box 577
Cle Elum, WA 98816

**RE: Order No. 8759 - Water Quality Certification for Olin Nichols; Teanaway River
Erosion Control and Shoreline Restoration in Kittitas County**

Dear Mr. Nichols:

The request for certification for proposed work in the Teanaway River has been reviewed. On behalf of the State of Washington, we certify that the proposed work, as conditioned by the enclosed Order, will comply 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 letter also serves as the State response to the Corps of Engineers.

This certification is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Catherine Reed at (509) 575-2616. Written comments can be sent to her at the Department of Ecology, Central Regional Office or at craj461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Jeffrey Lewis, Section Manager
Shorelands and Environmental Assistance Program

CR:je

Enclosure (Order)

By Certified Mail 7009 2250 0004 4951 9832

cc: Karen Urelius, Corps of Engineers

ecc: Brent Renfrow, WDFW
Dan Valoff, Kittitas County
Loree Randall, Ecology SEA-HQ



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF GRANTING A) ORDER # 8759
WATER QUALITY CERTIFICATION) Corps Reference No. NWS 2011-355
TO) Reconstruction of 750 feet of the Teanaway River
Olin Nichols, in accordance with 33 U.S.C.) channel to repair erosion and create an overflow
1341 (FWPCA § 401), RCW 90.48.120,) bench on the left bank of the channel at 1291 Quail
RCW 90.48.260 and Chapter 173-201A) Drive, Cle Elum in Kittitas County.
WAC)

TO: Olin Nichols
PO Box 577
Cle Elum, WA 98816

On July 15, 2011, via e-mail, Olin Nichols, through authorized agent Larry Lehman, 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 July 22, 2011.

The purpose of the project is to eliminate future loss of agricultural lands by stabilizing the shoreline on the subject property. The proposed project entails the reconstruction of 750 feet of the river channel with a bottom width of 30 feet and 3:1 slopes on both sides. Proposed channel reconstruction will require approximately 3800 cubic yards of excavation. An overflow bench will be constructed on the left bank of the reconstructed channel. The bench and portions of the adjacent riparian area will be planted with native vegetation. Four 80-foot long rock and log vanes will be keyed into the overflow bench and embedded into the channel. Wood structures comprised of 30-34 foot pine and/or fir trees with root-wads will be installed along the left bank between the rock and log vanes. In-stream work is expected to take up to two weeks to complete and will occur during the low flow period to minimize encroachment on the wetted channel. Total construction time is estimated to take two months and will take place in Kittitas County, Washington, in the northwest quarter of Section 24, Township 20N, Range 16 East of the Willamette Meridian, Water Resource Inventory Area (WRIA) #39.

Mitigation will include the installation of 60 mature trees incorporated into 12 log structures that will be buried in the banks to provide habitat for aquatic insects and to help form scour pools that will create habitat for fish and other aquatic species. Native riparian vegetation will be planted on at least 2.3 acres of the left bank. Willows will be planted on the overflow bench on top of native fill over vanes.

Existing unpermitted barbs will be dismantled and the rock from the barbs will be incorporated into the new project design.

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 Olin Nichols, and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Central Regional Office, Attn: Federal Permit Coordinator, SEA Program, 15 West Yakima Avenue, Suite 200, Yakima, Washington 98902. Any submittals shall reference Order No. **8759**, and Corps No. **NWS 2011-355**.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on July 15, 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.
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. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
7. 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.
8. 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.
9. 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.
10. 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 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. A copy of this Order, the afore-mentioned signed statements and associated permit approvals must be kept on site. The signed statements shall be provided to Ecology upon request, ideally before construction activities begin at the project site. An example of a statement form is included as an attachment to this order. (See attachment A)
11. 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.
12. 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. No Further Impairment of Existing Water Quality:

Certification of this proposal does not authorize the Applicants to exceed applicable state water quality standards (173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-200 shall apply to this project, unless otherwise authorized by Ecology.

1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-200 (1)(e)(i). Furthermore, nothing in this certification shall absolve the Applicants from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.
2. The Teanaway River has been identified on the current 303(d) list as exceeding state water quality standards for temperature. This proposed project shall not result in further exceedances of this standard.

C. Timing:

1. This Order is valid until all compliance requirements in this document have been met.
2. In-water work shall be subject to the timing limitations imposed by the most current Hydraulic Project Approval (HPA) issued by the Washington Department of Fish and Wildlife's (WDFW) for this project.

D. Notification Conditions:

1. The Applicant shall provide notification (FAX, e-mail or mail) to Ecology's Central Regional Office Federal Permit Coordinator prior to the start of construction at the project site.
2. The Applicant shall provide written notification to Ecology's Central Regional Office Federal Permit Coordinator in writing within fourteen (14) days after completion of construction.

NOTE: These notifications shall include the Applicant's name, project name, Order No. 8759, Corps Reference No. NWS 2011-355, project location, contact and contact's phone number.

E. Water Quality Monitoring and Reporting Conditions:

1. During and immediately after project construction, **the Applicant or their designee shall monitor for turbidity discharges at the point of compliance** established in WAC 173-201A-200(1)(e)(i). **If water quality exceedances are observed outside of the point of compliance, (300 feet downstream when river flows are 100 cfs or greater), work shall cease immediately** and the Applicant or the contractor shall assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further water quality turbidity exceedances. The Applicant or their contractor shall notify Ecology's Central Regional Office Federal Permit Coordinator at (509) 454-4260 if all applied BMPs cannot control the exceedances.
2. Visual monitoring for turbidity shall be taken downstream of the project area at the point of compliance at least once every 60 minutes during in-water construction activities. (The presence of a plume, or more suspended sediment than background conditions constitutes a positive result for turbidity monitoring purposes.) A written log documenting all turbidity visual inspections shall be kept on site and made available to Ecology inspectors. The logs shall include the name of the observer, time of day that the inspection was made, results, and

a map of the stream location where the monitoring point(s) were located. A copy of this log shall be sent to Ecology once per week.

When all coffer dams are in place, if no exceedances have been observed for more than three monitoring periods of similar work activity, and no other work below the Ordinary High Water Mark outside of the area protected by the coffer dam is taking place, monitoring frequency at the compliance point downstream can be decreased to once per 4-hour work period.

3. If the results of the monitoring show that the water quality standards or project performance standards are not being met, additional BMPs (such as but not limited to pumping turbid water out of the work area) shall be applied and additional monitoring, a change in monitoring technique (use of a turbidity meter), and/or additional mitigation may be required.
4. Any changes to the monitoring requirements must be approved in writing by Ecology.

F. Construction:

1. Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control, and best management practices suitable to prevent exceedances of state water quality standards (e.g., hay bales, detention areas, silt fences, etc.), shall be in place before starting clearing, filling, and grading work at the impact sites.
2. Prior to clearing and grading in wetlands, any adjacent waters or wetlands shall be protected from construction impacts. Silt fencing, construction fencing or flagging (using brightly colored materials or tape at no less than twenty-five foot (25') intervals) of the existing wetlands and stream channels to be protected shall be completed prior to clearing. All project staff shall be trained to recognize construction fencing or flagging that identifies wetland boundaries. Equipment shall not be moved into or operated in wetlands or stream channels that are not authorized to be filled, dredged, or otherwise disturbed.
3. During earth moving activities, the Applicant shall take all necessary measures to minimize the alteration or disturbance of existing wetland and upland vegetation.
4. No existing shoreline material (i.e., logs, rocks, gravel, cobbles, woody debris, etc.) shall be relocated or used for any other purposes, except that which is specifically authorized in this permit.
5. Any excess dredge spoils will be deposited upland, according to the plans provided to Ecology prior to the start of construction activity.
6. 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.
7. 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. Re-fueling areas must be located at least 150 feet away from the Ordinary High Water Mark of the stream.

8. Isolation structures must conform as much as possible to the shape of the channel bed. Supersacks or other similar structures must completely contain any loose organic (such as hay bales) or fine inert material used in berms or coffer dams to prevent discharge into the river.

G. Mitigation Measures

1. The applicant shall re-vegetate at least 1.4 acres of upland and 0.9 acres of riparian area associated with the project as per information provided in the NRCS Tree Shrub Establishment document (Revised 8-2011_spec612wa.docx) and as modified within this document. A minimum of 600 stems per acre will be planted with shrubs and trees per the NRCS plan and the entire riparian planting area shall be seeded with native grasses.
2. **An annual re-vegetation monitoring report shall be sent to Ecology by December 31 of each year for 5 years after planting.** The report shall include a narrative of maintenance activities on site for the monitoring period, including replanting activities, and any noxious weed control. If vegetation efforts do not meet the performance standard of 80 percent survival, the report will include an adaptive management plan to ensure that revegetation is successful.

H. Emergency/Contingency Measures:

1. In the event the Applicant is unable to comply with any of the permit terms and conditions due to any cause, the Applicant shall:
 - (i) Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
 - (ii) Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (509) 575-2490, and within 24 hours to Ecology's Federal Permit Coordinator at (509) 454-4260.
 - (iii) Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
2. 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.
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. No refueling of equipment shall occur over, or within 100 feet of creeks, rivers, lakes, or wetlands.

FAILURE TO COMPLY WITH THIS ORDER

Failure to comply with this Order may result in civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

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 Road 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:

Catherine D. Reed
Department of Ecology
15 West Yakima Avenue, Suite 200
Yakima, WA 98902

(509) 575-2616
craj461@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 34.05 RCW – Administrative Procedure Act

<http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05>

Chapter 90.48 RCW – Water Pollution Control

<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>

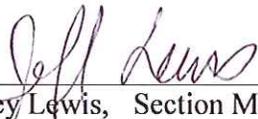
Chapter 173.204 WAC – Sediment Management Standards

www.ecy.wa.gov/biblio/wac173204.html

Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington

www.ecy.wa.gov/biblio/wac173201A.html

SIGNATURE



Jeffrey Lewis, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology – Central Region
State of Washington



[Date]

ATTACHMENT A

Olin Nichols
Water Quality Certification Order #8759

Statement of Understanding of
Water Quality Certification Conditions

I have read and understand the conditions of Order #8759 Section 401 Water Quality Certification for the Teanaway River Erosion Control and Bank Restoration Project. I have also read and understand all permits, plans, documents, and approvals associated with the above-referenced Teanaway Project referenced in this order.

Signature

Date

Title