



STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

P.O. Box 47600 • Olympia, Washington 98504-7600  
(360) 407-6000 • TDD Only (Hearing Impaired) (360) 407-6006

February 22, 2012

JA Jack and Sons Inc  
Attn: Mr Gerald Deguise  
PO Box 80786  
Seattle WA 98108

RE: Water Quality Certification - Order #8988/Corps Public Notice # NWS 2011-570 -  
Dredging and disposal of up to 1,140 cubic yards of limestone from the bed of the  
Duwamish River in Seattle, King County Washington

Dear Mr Deguise:

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

by Certified Mail 7009 0820 0001 09056 0670

Enclosure



Mr. Gerald Deguise  
February 22, 2012  
Page 2 of 2

cc: Jacalyn Prinz, Corps  
Laura Arber, WDFW  
Josh Jensen, Anchor QEA  
Erika Hoffman, EPA-WOO

ecc: Loree' Randall, Ecology  
Helen Pressley, Ecology  
Laura Inouye, Ecology  
Joe Burcar, Ecology NWRO  
DMMP@dnr.wa.gov  
Ecyrefedpermits

**IN THE MATTER OF GRANTING A ) ORDER #8988**  
**WATER QUALITY ) Corps Reference No. NWS-2011-570**  
**CERTIFICATION TO ) Dredging and disposal of up to 1,140 cubic yards**  
**JA Jack & Sons ) of limestone from the bed of the Duwamish**  
in accordance with 33 U.S.C. 1341 ) River in Seattle, King County Washington  
(FWPCA § 401), RCW 90.48.120, RCW )  
90.48.260 and Chapter 173-201A WAC )

TO: JA Jack and Sons  
Attn: Mr Gerald Deguise  
PO Box 80786  
Seattle WA 98108

On November 2, 2011, JA Jack & Sons 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 November 9, 2011.

The project includes the dredging of up to 1,140 cubic yards of (cy) limestone from a 1,400 square foot area with a clamshell bucket to a depth of -16 feet mean lower low water (MLLW) plus 2 feet of allowable overdredge. The removed material would be placed in a confined upland location where it would be cleaned and reused in the normal operations of the business. The limestone material to be removed is material that was spilled while the facility was undertaking normal operations. The project also includes placement of up to 140 cy of clean material 1 foot in depth over the entire exposed surface area after dredging is complete.

The purpose of the project is to restore adequate water depth for moorage.

**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:**

1. For purposes of this Order, the term "Applicant" shall mean JA Jack & Sons 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 and/or hpre461@ecy.wa.gov. Any submittals shall reference Order #8988 and Corps Reference # NWS-2011-570.
3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resources Permit Application (JARPA) received by Ecology on November 2, 2011. 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 and/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 and 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, 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. 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).
  - The area of mixing established for marine waters is a 150 foot radius surrounding the in-water activity. Turbidity occurring outside that zone that is more than 5 nephelometric turbidity units (NTU) over background when the background is 50 NTU or less, or a 10% increase in turbidity when the background turbidity is more than 50 NTU is a violation of the turbidity water quality standard.

**C. Water Quality Monitoring:**

1. The Applicant shall implement the water quality monitoring plan that was submitted to Ecology on January 2012. If at any time this plan is revised, the Applicant shall submit the revised plan to Ecology for approval prior to implementing the revised plan.

2. Turbidity monitoring reports shall be sent weekly to the 401/CZM Federal permit coordinator. The permit coordinator shall be contacted within 24 hours if an exceedance occurs.
3. After monitoring per the submitted monitoring plan is complete, turbidity shall be monitored visually. Visible turbidity anywhere at or beyond the 150 ft point of compliance from the activity shall be considered to be an exceedance of the standard and reported as such.

**D. Dredging and Disposal:**

1. All dredging is to be done using a clamshell dredge. **Use of any other type of dredge requires preapproval from Ecology.**
2. All dredged material will be placed in a confined upland location, cleaned and reused in normal business operations. **Use of any other type of disposal method or location requires preapproval by Ecology.**
3. 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.
4. Dredged material shall not be stockpiled on a temporary or permanent basis below the ordinary high water line.
5. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.

**E. 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 3 years from date of issuance. Continuing this project beyond the 3 year term of this Order will require separate certifications every 3 years.

**F. 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.

**G. 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 and/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 and/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.

**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**

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

DATED: February 22, 2012 at Olympia, Washington.



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

**ATTACHMENT A**

**JA Jack & Sons  
JA Jack & Sons Maintenance Dredging  
Water Quality Certification Order #8988**

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

I have read and understand the conditions of Order #8988 Section 401 Water Quality Certification for the **JA Jack & Sons Maintenance Dredging** Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Company

\_\_\_\_\_  
Title

