



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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May 29, 2012

City of Bellingham
Mr. Rory Routhe
210 Lottie Street
Bellingham, Washington 98225-4009

RE: Water Quality Certification Order No. **9218** for Corps Nationwide Permit 39
NWS-2011-628 for the Post Point WWTP Improvements, Wetlands, Whatcom
County, Washington

Dear Mr. Routhe:

On June 27, 2011, the City of Bellingham submitted a Joint Aquatic Resources 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 Post Point WWTP Improvements project.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and Nationwide Permit 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.

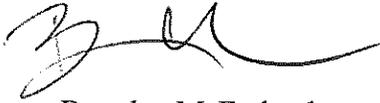
On April 19, 2012 the City of Bellingham submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the City of Bellingham's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon all applicable enforceable policies of the CZMP, including Section 401 of the CWA.

If you have any questions, please contact Jessica Moore at (360) 407-7421. The enclosed Order may be appealed by following the procedures described in the Order.



City of Bellingham
Mr. Rory Routhe
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Sincerely,



Brenden McFarland
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program

by Certified Mail 7009 0820 0001 9056 1004

Enclosure

e-cc: Lizzie Zemke, ESA
Randel Perry, U.S. Army Corps of Engineers, Seattle District
Loree' Randall – Ecology, HQ-SEA
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A)	ORDER # 9218
WATER QUALITY)	Corps Reference No. NWS-2011-628
CERTIFICATION TO)	Nationwide Permit 39
CITY OF BELLINGHAM)	Post Point Wastewater Treatment Plant
in accordance with 33 U.S.C. 1341)	improvements located in Whatcom County,
(FWPCA § 401), RCW 90.48.120, RCW)	Washington.
90.48.260 and Chapter 173-201A WAC)	
)	
)	

TO: City of Bellingham
 Attn: Mr. Rory Routhe
 210 Lottie Street
 Bellingham, Washington 98225

On June 27, 2011 the City of Bellingham submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on April 27, 2012.

The proposed project entails improvements to the existing wastewater treatment facility, including a new secondary clarifier and new activated sludge basin at 200 McKenzie Avenue, Bellingham, Whatcom, Washington 98225, Section 2 and 11, Township 37N, Range 2E, WRIA# 1, Nooksack.

The project proposes to place fill in 0.14 acre of a Category IV wetland to facilitate construction of the new facilities.

Proposed mitigation to compensate for permanent impacts includes creation of approximately 0.26 acre of estuarine wetland adjacent to Post Point lagoon and enhancement of Wetland A onsite.

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. §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 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 City of Bellingham, and its agents, assignees and contractors.
2. All submittals required by this Order shall be sent to Ecology's Headquarters, Attn: Federal Project Coordinator, PO Box 47600, Olympia WA 98504 or via e-mail (preferred) to ecyrefedpermits@ecy.wa.gov. The submittals shall be identified with Order No. 9218 and Corps Reference #NWS-2011-628.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on June 27, 2011, unless otherwise authorized by Ecology.
4. The Applicant shall obtain Ecology review and approval before undertaking any changes to the proposed project that might significantly and adversely affect water quality, other than those project changes required by this Order.
5. Within 30 days of receipt of any updated information, 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.
6. The Applicant shall keep copies of this Order 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. 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.
10. Failure of any person or entity to comply with the Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

B. Wetland Mitigation and Monitoring

1. The Applicant shall mitigate wetland impacts as described in the *Post Point Wastewater Treatment Plant Improvements Wetland and Wildlife Mitigation Plan* (hereafter called the "Mitigation Plan") prepared by ESA and dated June 2011, or as modified by this Order or revised and approved by Ecology.
2. A status report on the mitigation construction must be submitted to Ecology, 13 months from the date of permit issuance. Annual status reports on mitigation construction are required until mitigation construction is complete.
3. The Applicant shall have a wetland professional at the wetland mitigation site to supervise during construction and planting.
4. Unless otherwise approved by Ecology in writing, the Applicant shall begin the compensatory mitigation project before, or concurrent with, impacting wetlands or Ecology may require additional compensation to account for additional temporal loss of wetland functions.
5. The Applicant shall ensure that all excess excavated site material is disposed of in an appropriate location outside of wetlands and their buffers at the wetland mitigation site and above the 100-year floodplain.

6. The Applicant shall ensure that no material is stockpiled within existing wetlands and their buffers at the wetland mitigation site(s) at any time, unless provided for in the Ecology-approved Mitigation Plan.
7. The Applicant shall ensure that no construction debris is deposited within existing wetland and their buffers at the wetland mitigation site(s) at any time, unless provided for in the Ecology approved Mitigation Plan.
8. The Applicant shall not use polyacrylamide on exposed or disturbed soil at the mitigation site(s).
9. The Applicant shall not use hay or straw on exposed or disturbed soil at the mitigation site(s).
10. If weed-barrier fabric is used on the site, the Applicant shall use only permeable, fully biodegradable, non-toxic weed-barrier fabric for entire-site and/or individual plant weed control. Non-biodegradable plastic weed-barrier fabric shall be used only at the base of individual plants and shall be removed before it starts to break down, before it interferes with plant growth, or before the end of the monitoring period, whichever comes first.
11. If seeding is used at the wetland mitigation site, the seed mix must contain only native, annual, non-invasive plant species.

C. Timing Requirements

1. This Order will expire on April 13, 2014.

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>

DATED: March 29, 2012 at Olympia Washington

SIGNATURE



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

