STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
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October 28, 2013

Mr. Steve Hyman
Port of Kingston
PO Box 559
Kingston WA 98346

RE: Water Quality Certification - Order #10170/Corps Public Notice # NWS-2012-1110
Maintenance dredging of up to 17,000 cubic yards of sediment from the Port of Kingston marina in Kingston Harbor, Puget Sound, Kitsap County, Washington.

Dear Mr. Hyman:

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,

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

by Certified Mail 7009 0820 0001 9056 0564

cc: Jerald Gregory, Corps
Chris Waldbillig, WDFW

ecc: Loree' Randall, Ecology
Helen Pressley, Ecology
Laura Inouye, Ecology
Patrick McGraner NWRO, Ecology
ecyrefedpermits@wa.gov
DMMP@dnr.wa.gov

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Port of Kingston in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	)))))))	**ORDER #10170** **Corps Reference No. NWS-2012-1110** Maintenance dredging of up to 17,000 cubic yards of sediment from the Port of Kingston marina in Kingston Harbor, Puget Sound, Kitsap County, Washington

TO: Port of Kingston
Attn: Mr. Steve Hyman
PO Box 559
Kingston WA 98346

On October 12, 2012, the Port of Kingston 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 June 26, 2013.

The Applicant proposes to conduct maintenance dredging within the main basin, fairway, and entrance channel of the Port of Kingston marina. The entrance channel will be dredged down to an elevation of -13.5 Mean Lower Low Water (MLLW) and the main basin and fairway will be dredged to a depth of -9.0 feet MLLW. No more than 17,000 cubic yards (cy) of sediment will be removed from a 186,000 square foot area.

An undetermined area of eelgrass will be relocated to a mitigation site located on another Port property. Eelgrass mitigation will occur at a 1.5:1 ratio as described in the *Port of Kingston Marina Maintenance Dredging Project Eelgrass Mitigation and Monitoring Plan* dated April 10, 2013 by Grette and Associates.

Side slopes along the navigation channel and main basin will be dredged to 8H: 1V, and 3H: 1V respectively. Dredged materials will be disposed of at the Port Gardner open water disposal site near Everett. Dredging will be conducted by clamshell bucket and a floating turbidity curtain and/or debris boom will be deployed during dredging and barge dewatering. The project is expected to be completed within a 2 month time period.

The purpose of the project is to restore safe navigation within an existing marina and navigation channel.

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. In this Order, the term "Applicant" shall mean the Port of Kingston and its agents, assignees and contractors.

2. All submittals required by this Order shall be sent to Ecology's Headquarters Office, Attn: Federal Permit Coordinator, P.O. Box 47600 Olympia, WA 98504-7600 and/or hpre461@ecy.wa.gov. Any submittals shall reference Order #10170 and Corps Reference # NWS-2012-1110.

3. All notifications listed below shall be made via phone to Helen Pressley, 360-407-6076, or e-mail at hpre461@ecy.wa.gov. These notifications shall be identified with Order #10170 and include the Applicant's name, the project contact, and the contact's phone number.

    a. At least ten (10) days prior to conducting initial in-water work activities for each in-water work window.
    b. Within at least seven (7) days after completion of the in-water work.

4. Work authorized by this Order is limited to the work described in the Joint Aquatic Resources Permit Application (JARPA) received by Ecology on October 12, 2012, unless otherwise authorized by Ecology.

5. 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.

6. Within 30 days of receipt of the updated information, Ecology will determine if the revised project requires a new public notice and Certification or if a modification to this Order is required.

7. 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.

8. The Applicant shall send (per A.2.) a copy of the final Section 404 Corps permit to the Ecology Federal Project Manager within two weeks of receiving it from the Corps.

9. 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.

10. Upon Ecology personnel's request, the Applicant shall provide access to the project site, all staging areas, and mitigation sites for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.

11. 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.

12. In the event of changes or amendments to the state water quality, ground water quality, or sediment standards, or changes in or amendments to the state Water Pollution Control Act (RCW 90.48), or the federal Clean Water Act, Ecology will issue an administrative order to incorporate any such changes or amendments applicable to this project.

13. 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.

14. 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.

15. 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.

16. This Order will automatically transfer to a new owner or operator if:

    a. A written agreement between the Applicant and new owner or operator with the specific transfer date of the Order's obligations, coverage, and liability is submitted to Ecology per condition A.2.;
    b. A copy of this Order is provided to the new owner or operator; and
    c. If Ecology does not notify the new Applicant that this Order must be modified to complete the transfer.

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.

    - Visible turbidity anywhere at 150 ft point of compliance from the activity and/or the disposal location shall be considered to be an exceedance of the standard.

C. Water Quality Monitoring:

1. Ecology has reviewed and approved the Port of Kingston *"Water Quality Management Plan"*(WQMP) dated April 28, 2013 as prepared by Grette Associates. **Any changes made to this document must be reviewed and approved by Ecology prior to implementation of those changes.**

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.

D. Dredging and Disposal:

1. All dredging is to be done using a barge-mounted mechanical dredge. **Use of any other type of dredge requires preapproval from Ecology.**

2. All dredged material will be placed into hopper barges and towed to the Port Gardner non-dispersive open water disposal site or used beneficially. **Use of any other type of disposal method or location requires preapproval by Ecology.**

3. For material being taken to open water disposal sites, all debris (larger than 2 feet in any dimension) shall be removed from the dredged sediment prior to disposal. Similar-sized debris found floating in the disposal area shall also be removed.

4. 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.

5. Dredged material shall not be stockpiled on a temporary or permanent basis below the ordinary high water line.

6. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.

7. A pre-dredge meeting is required to be convened prior to the start of dredging. A **Dredging Plan** is required and shall be submitted to Ecology to the 401/CZM Federal permit coordinator at the address shown in Condition A2 for review and approval a minimum of 2 weeks prior to the pre-construction meeting.

8. Prior to each dredging cycle, the Applicant shall contact the DMMP agencies to determine whether additional sediment testing is required. If additional testing is required, no dredging or disposal shall be conducted until the material has been tested and a suitability determination has been issued. This area ranks moderate in potential for contamination and the recency determination extends until February, 2018. Contact the DMMO for a possible extension on this permit.

E. Eelgrass Mitigation:

1. Wetland compensatory mitigation and monitoring for the impacts to eelgrass from dredging shall be performed as described in the *Port of Kingston Marina Maintenance Dredging Project Eelgrass Mitigation and Monitoring Plan* dated April 10, 2013 by Grette and Associates.

F. 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 10 years from date of issuance. Continuing this project beyond the 10 year term of this Order will require separate certifications every 10 years.

G. 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.

H. 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 both 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
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:

Helen Pressley
Department of Ecology
SEA Program Headquarters
PO Box 47600
Lacey WA 98504

360-407-6076
hpre461@ecy.wa.gov

MORE INFORMATION

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

Chapter 43.21B RCW - Environmental and Land Use 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 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington
www.ecy.wa.gov/biblio/wac173201A.html

SIGNATURE

Dated this 28th day of October 2013 at the Department of Ecology, Lacey Washington.

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

ATTACHMENT A

Port of Kingston
Port of Kingston Marina Maintenance Dredge
Water Quality Certification Order #10170

Statement of Understanding of
Water Quality Certification Conditions

I have read and understand the conditions of Order #10170 Section 401 Water Quality Certification for the Port of Kingston Port of Kingston Marina Maintenance Dredge. 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