



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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July 10, 2013

John Maas
Department of Transportation
Northwest Region
P.O. Box 330310
Seattle, WA 98133-9710

RE: Water Quality Certification Order #10036 for Corps Public Notice No. NWS-2013-396 for the SR 539 Lynden-Aldergrove Port of Entry Improvements in Whatcom County, Washington

Dear Mr. Maas:

On April 29, 2013, the Washington Department of Transportation (WSDOT), 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 SR 539 Lynden-Aldergrove Port of Entry Improvements project.

WSDOT is proposing to widen SR 539 to improve freight traffic movement at the United States Canadian Border by separating freight traffic from passenger vehicles. A northbound truck lane will be added that ties into the proposed Canadian truck processing facility and a northbound Nexus lane will be constructed for passenger vehicles. The existing lanes will be widened from 11 feet to 12 feet and the shoulder width will be 14 feet.

This project proposes to permanently impact 1.05 acres of wetland. WSDOT will provide compensatory mitigation for these unavoidable impacts through the purchase of 1.02 wetland credits at the Lummi Nation Wetland & Habitat Mitigation Bank.

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.



John Maas
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If you have any questions, please contact Penny Kelley at 360-407-7298. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Brenden McFarland
Headquarters Office
Shorelands and Environmental Assistance Program

by Certified Mail 7010 2780 0000 2503 3464

Enclosure

E-cc: MAP Team
Stephanie Barney, Ecology WQ
Kevin Stuber, WSDOT
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A)	ORDER # 10036
WATER QUALITY)	Corps Reference No. NWS-2013-396
CERTIFICATION TO)	Widen existing lanes on SR 539 and add a
WA Department of Transportation)	northbound truck land and nexus lane to separate
in accordance with 33 U.S.C. 1341)	freight traffic from passenger vehicles. The
(FWPCA § 401), RCW 90.48.120, RCW)	project is located in Whatcom County, WA.
90.48.260 and Chapter 173-201A WAC)	

Department of Transportation
Northwest Region
Attn: John Maas
P.O. Box 330310
Seattle, WA 98133-9710

On April 29, 2013, Ecology received a Joint Aquatic Resources Permit Application (JARPA) from the Washington Department of Transportation (WSDOT) requesting a 401 Water Quality Certification (WQC). The U.S. Army Corps of Engineers (Corps) issued a public notice for the project on May 13, 2013.

WSDOT is proposing to widen SR 539 to improve freight traffic movement at the United States Canadian Border by separating freight traffic from passenger vehicles. A northbound truck lane will be added that ties into the proposed Canadian truck processing facility and a northbound Nexus lane will be constructed for passenger vehicles. The existing lanes will be widened from 11 feet to 12 feet and the shoulder width will be 14 feet. This project will permanently impact existing wetlands. WSDOT will provide compensatory mitigation for these impacts through purchase of wetland credits at the Lummi Nation Wetland & Habitat Mitigation Bank.

This project is located on SR 539 starting at milepost 14.34 and ending at milepost 15.16 in Whatcom County, WA.

WRIA 1 Nooksack

Section 1 T40N R2E

Section 36 T41N R2E

Section 6 T40N R3E

Section 31 T41N R3E

AUTHORITIES

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed 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 comply with 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 WSDOT to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification absolves WSDOT from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments resulting from project construction or operations.

A. General Conditions

1. In this Order, the term "Applicant" shall mean the Washington State Department of Transportation and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent to Ecology's Headquarters Office, Attn: Federal Project Coordinator, P.O. Box 47600, Olympia, WA 98504 or via e-mail (preferred), if possible, to the Coordinator assigned to this project. The submittals shall be identified with Order No. 10036 and include the Applicant's name, project name, project location, the project contact and the contact's phone number.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on April 29, 2013. 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 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.
5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual Section 404 permit.

6. The Applicant shall send (per A.2.) a copy of the final Section 404 permit to Ecology's Federal Project Coordinator within two weeks of receiving it.
7. 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.
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 project engineers, contractors, and other workers at the project site with authority to direct work 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 signatory that s/he has read and understands the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins.
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. 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. Notification Requirements

1. Notification shall be made via phone or e-mail (e-mail is preferred) to Ecology's Federal Project Coordinator. Notifications shall be identified with Order No. 10036 and include the Applicants name, project name, project location, project contact and the contact's phone number.
 - a. Immediately following a violation of state water quality standards, spill to waters of the state or when the project is out of compliance with any of this Orders conditions.

- i. In addition to the phone or e-mail notification, the Applicant shall 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.
- b. At least ten (10) days prior to all pre-construction meetings
- c. At least seven (7) days within project completion.

C. Timing

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

D. Water Quality Monitoring & Criteria

1. Un-named Stream is categorized as Core Summer Habitat and the criteria of the categorization apply as described in WAC 173-201A-200 (1), except as specifically modified by this Order.
2. This Order does not authorize the Applicant to exceed applicable state water quality standards for turbidity as described in WAC 173-201A-200 (1)(e).
3. During in-water work, the Applicant shall monitor (visual and/or physical sampling) for turbidity.
4. The Applicant shall notify Ecology of any turbidity exceedances during in-water work per condition B1.a.i of this Order.

E. Construction

General Conditions

1. The Applicant shall comply with the conditions of the current Construction Stormwater Permit (National Pollutant Discharge Elimination System – NPDES) issued for this project.
2. Within the project limits¹ all environmentally sensitive areas including, but not limited to, wetlands, wetland buffers, and mitigation areas shall be fenced with high visibility construction (HVF) prior to commencing construction activities. Construction activities include equipment staging, materials storage, and work vehicle parking. *Note: This condition does not apply to activities such as pre-construction surveying and installing HVF and construction zone signage.*

¹ Project limits include mitigation sites, staging areas, borrow sources, and other sites developed or used to support project construction.

- a. If the project will be constructed in stages² a detailed description and drawings of the stages shall be sent to Ecology for review at least 20 days prior to placing HVF.
 - b. All field staff shall be trained to recognize HVF, understand its purpose and properly install it in the appropriate locations.
 - c. HVF shall be maintained until all work is completed for each project or each stage of a staged project.
3. All clearing limits, stockpiles, staging areas, and trees to be preserved shall clearly be marked prior to commencing construction activities and maintained until all work is completed for each project.
 4. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
 5. All construction debris, excess sediment, and other solid waste material shall be properly managed and disposed of in an upland disposal site approved by the appropriate regulatory authority.
 6. The Applicant shall utilize BMPs during in-water work that minimizes turbidity and disturbance of sediments.
 7. Turbid de-watering water associated with in-water work shall not be discharged directly to waters of the state, including wetlands. Turbid de-watering water shall be routed to an upland area for on-site or off-site settling.
 8. Clean de-watering water associated with in-water work that has been tested and confirmed to meet water quality standards may be discharged directly to waters of the state including wetlands. The discharge outfall method shall be designed and operated so as not to cause erosion or scour in the stream channel, banks, or vegetation.

Equipment & Maintenance

9. Staging areas will be located a minimum of 50 feet and, where practical, 200 feet, from waters of the state including wetlands. If a staging area must be located within 50 feet of waters of the state, then the Applicant shall provide a written explanation and obtain approval from Ecology's Federal Permit Coordinator before placing the staging area in the setback area.
10. Equipment used for this project shall be free of external petroleum-based products while used around the waters of the state, including wetlands. Accumulation of soils or debris shall be removed from the drive mechanisms (wheels, tires, tracks, etc.) and the undercarriage of equipment prior to its use around waters of the state, including wetlands.

² A stage is part of a project that has been separated into at least two distinct areas to be built during separate timeframes.

11. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.
12. 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.
13. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall not be discharged into state waters. The Applicant shall set up a designated area for washing down equipment.
14. A separate area shall be set aside, which does not have any possibility of draining to surface waters, for the wash-out of concrete delivery trucks, pumping equipment, and tools.

F. Wetlands

1. The Applicant shall mitigate wetland impacts as described in the SR 539 Lynden-Aldergrove Port of Entry Improvements Wetland Mitigation Report (hereafter called the "mitigation plan") prepared by Kristin Murray, WSDOT Wetlands/Fisheries Biologist, dated March 2013, or as revised and approved by Ecology.
2. Prior to impacting wetlands, the Applicant shall submit to Ecology documentation from the bank sponsor verifying the purchase of 1.02 wetland mitigation bank credits (credits) from the Lummi Nation Wetland and Habitat Mitigation Bank. This documentation must include the permit number, permit issuance date, impact acreage, the amount of credits required by the permit, and date of credit purchase.
3. The Applicant shall notify Ecology of any changes to the amount of wetland impacts, or revisions to the mitigation plan. The Applicant shall complete the purchase of credits before the impacts to wetlands occur or Ecology may require additional compensation to account for temporal loss of wetland functions.
4. If the credits are not purchased within 13 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of
 - a. Name of project affecting wetlands.
 - b. When bank credits will be purchasedWith the:
 - c. Reason for the delay
 - d. Expected date of completion.

G. Emergency/Contingency Measures

1. The Applicant shall develop and implement a spill prevention and containment plan for this project and shall have spill cleanup material available on site at all times during construction.
2. Work that is out of compliance with the provisions of this Order, conditions causing distressed or dying fish, discharges of oil, fuel, or chemicals into state waters or onto land with a potential for entry into state waters, is prohibited. If such work, conditions, or discharges occur, the Applicant shall comply with WSDOT's most current Environmental Compliance Assurance Procedure for Construction Project and Activities, notify the Ecology Project Coordinator per condition B.1.a. and immediately take the following actions:
 - a. Cease operations at the location of the non-compliance.
 - 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. Immediately notify Ecology's Regional Spill Response Office at 425-649-7000 and the Washington State Department of Fish & Wildlife the nature and details of the problem, any actions taken to correct the problem, and any proposed changes in operation to prevent further problems.
 - e. Immediately notify the National Response Center at 1-800-424-8802, for actual spills to water only.
3. Notify Ecology's Regional Spill Response Office at 425-649-7000 immediately if chemical containers (e.g. drums) are discovered on-site or any conditions present indicating disposal or burial of chemicals on-site that may impact surface water or ground water.

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
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:

Penny Kelley
Department of Ecology
P.O. Box 47600
Olympia, WA 98503-7600
360-407-7298
pkel461@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>

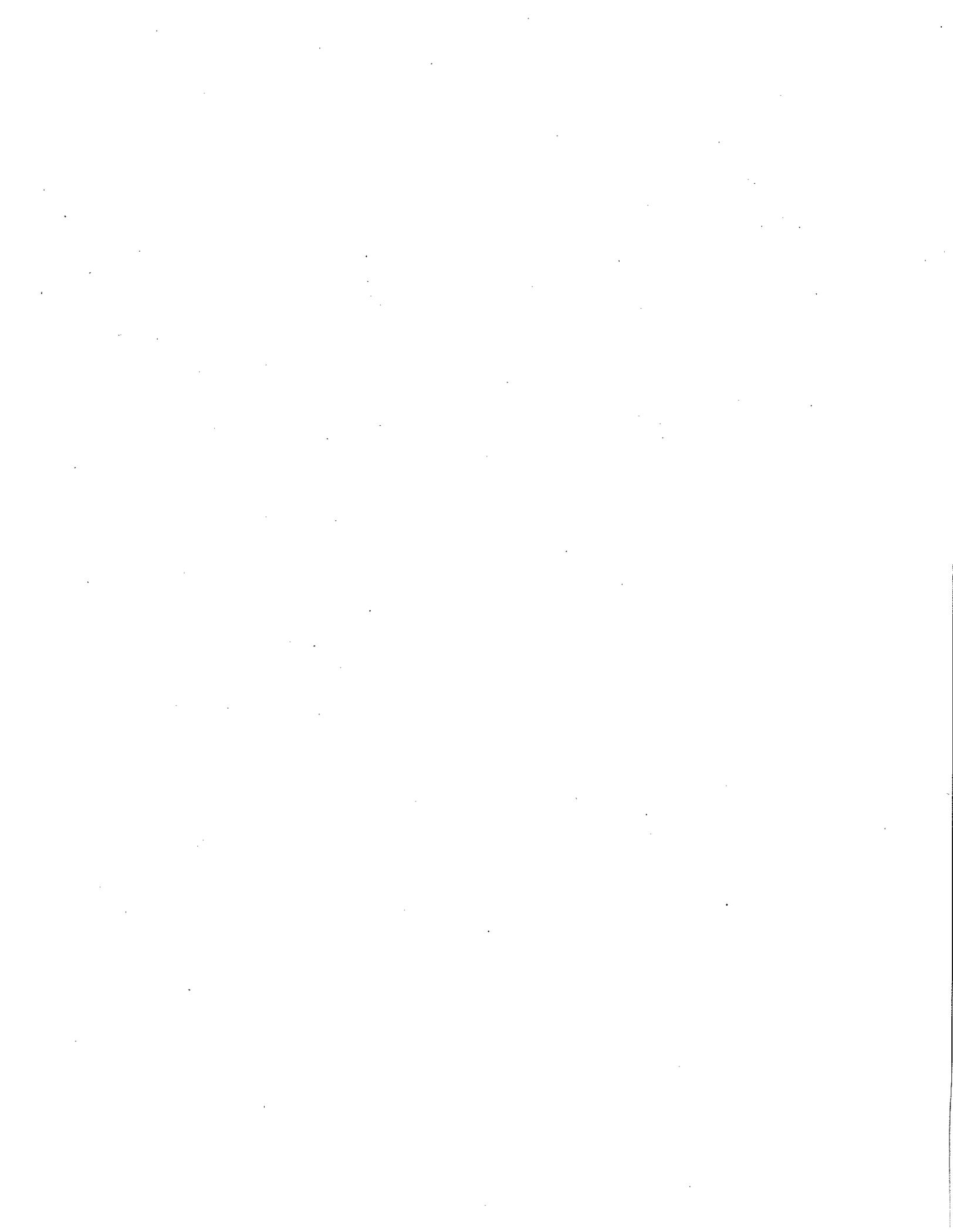
- **Chapter 34.05 RCW – Administrative Procedure Act**
<http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Chapter 90.48 RCW – Water Pollution Control**
<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>
- **Chapter 173.204 Washington Administrative Code (WAC) Sediment Management Standards**
<http://www.ecy.wa.gov/biblio/wac173204.html>
- **Chapter 173-200 WAC Water Quality Standards for Ground Waters of the State of Washington**
<http://www.ecy.wa.gov/biblio/wac173200.html>
- **Chapter 173-201A WAC Water Quality Standards for Surface Waters of the State of Washington**
<http://www.ecy.wa.gov/biblio/wac173201A.html>

SIGNATURE

Dated this 10th day of July, 2013 at the Department of Ecology, Lacey Washington



Brenden McFarland, Section Manager
Environmental Review and Transportation
Shorelands and Environmental Assistance Program
Headquarters



Water Quality Certification Order #10036
Statement of Understanding

I, _____, state that, I will be involved as a WSDOT employee or an agent or contractor for Washington State Department of Transportation in the SR 539 Lynden-Aldergrove Port of Entry Improvements in Whatcom County, WA. I further state that I have read and understand the relevant conditions of Washington Department of Ecology **Water Quality Certification Order#10036** and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Company

Phone number

Address

City, State, and Zip Code

