



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000
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April 14, 2014

Heather Haslip
Port of Skagit
15400 Airport Drive
Burlington, WA 98233

RE: Water Quality Certification Order #10628 for U.S. Army Corps of Engineers
Public Notice #NWS-2013-1100, Port of Skagit Runway 11-29 Runway Safety
Area (RSA) Grading Project, Wetlands, Burlington, Skagit County, Washington

Dear Ms. Haslip:

On October 18, 2013, Port of Skagit submitted a Joint Aquatic Resource 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 , Port of Skagit Runway 11-29 Runway Safety Area (RSA) Grading project.

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.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Erik Stockdale, Section Manager
Shorelands and Environmental Assistance Program
Northwest Regional Office

ES:rrp:mrw
Enclosure

By certified mail: 7011 0470 0003 3720 7950



cc: Randel Perry, U.S. Army Corps of Engineers
Analiese Burns, Northwest Ecological Services, LLC

e-cc: Paul Anderson, Ecology
Raman Iyer, Ecology
Loree' Randall, Ecology
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A) ORDER #10628
WATER QUALITY) Corps Reference #NWS-2013-1100
CERTIFICATION TO) Port of Skagit Runway 11-29 Runway Safety
Port of Skagit) Area (RSA) Grading Project; Wetlands, Skagit
in accordance with 33 U.S.C. 1341) County, Washington.
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: Port of Skagit
Attn: Heather Haslip
15400 Airport Drive
Burlington, WA 98233

On October 18, 2013, Port of Skagit submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on November 7, 2013.

In order to comply with Federal Aviation Administration safety requirements, the project would involve filling and grading a 12.35-acre area to construct a runway safety area located northwest of the existing Runway 11-29. No pavement, buildings, or other impervious surfaces would be installed. Project actions would establish a uniform surface elevation and grading to match existing elevations along the perimeter. Work would be performed by mechanical equipment; temporary sediment and erosion controls would be employed to protect downstream waters. The proposal includes 5.83 acres of permanent wetland impact (fill), including 0.56 acre of palustrine emergent (PEM) Category III wetlands, 0.06 acre of PEM Category IV wetlands, 0.66 acre of PEM-palustrine forested (PFO) Category III wetlands, and 4.55 acres of PEM-PFO-palustrine scrub/shrub Category II wetlands. The proposed work would also result in temporary impacts to 6.46 acres of wetland buffer area.

Mitigation for the wetland fill would include purchase of 6.96 credits from the Nookachamps Wetland Mitigation Bank. On-site mitigation measures include cattle exclusion fencing, relocating a livestock water trough, and incorporation of stormwater best management practices in order to improve or maintain water quality, hydrology, and wildlife functions in remaining wetlands.

The project is located at 15400 Airport Drive, Burlington, Skagit County, Washington, in wetlands, Section 33, T. 35N, R. 3E, WRIA 3.

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 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:

- A1. For purposes of this Order, the term "Applicant" shall mean Port of Skagit and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #10628 and Corps Reference #NWS-2013-1100.

- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on October 18, 2013. 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.
- A4. 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.
- A5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual Section 404 permit.
- A6. 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.
- A7. 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.
- A8. 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.
- A9. 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 or mitigation sites.
- A10. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state (including wetlands) or related aquatic resources, except as specifically provided for in conditions of this Order.
- A11. 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. Wetland Compensatory Mitigation Conditions:

- B1. The Applicant shall mitigate wetland impacts as described in the *Conceptual Mitigation/Bank Use Plan, Runway 11 RSA Grading Project* (hereafter called the “mitigation plan”) prepared by Northwest Ecological Services, LLC, dated September 2013, or as revised and approved by Ecology.
- B2. Prior to impacting wetlands, the Applicant shall submit to Ecology documentation from the bank sponsor verifying the purchase of 6.96 wetland mitigation bank credits (credits) from the Nookachamps Wetland 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.
- B3. The Applicant shall notify Ecology of any changes to the amount of wetland impacts, or revisions to the mitigation plan.
- B4. 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.
- B5. 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) Runway 11 RSA Grading Project
 - b) When bank credits will be purchased

With the:

- c) Reason for the delay
- d) Expected date of completion.

The Applicant shall submit an updated written notification every 12 months thereafter until the Runway 11 RSA Grading Project is complete and the required credits are purchased.

C. Conditions for Construction Activities:

General Conditions:

- C1. Applicant shall obtain and comply with a Construction Stormwater General Permit for this project.

- C2. Construction stormwater, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
- C3. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- C4. All construction debris shall be properly disposed of in a manner to prevent it from entering the wetlands and/or wetland buffers.
- C5. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
- C6. 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.
- C7. Clean Fill Criteria: Applicant shall ensure that fill (soil) placed for the proposed project does not contain toxic materials in toxic amounts.

D. Emergency/Contingency Measures:

- D1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- D2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
- D3. 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.
- D4. 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 shall immediately take the following actions:
 - a. Cease operations at the location of the violation or spill.

- b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
- c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (425) 649-7129 or (425) 649-7000.
- d. 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.

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.

E. Timing Requirements

- E1. This Order expires 3 years from the date of issuance of the Corps permit.

F. Reporting and Notification Requirement Conditions

- F1. The Applicant shall provide to Ecology's 401/CZM Federal Permit Manager a copy of the final Corps permit within 2 weeks of receipt of the permit. A copy shall be submitted per condition A2 above.
- F2. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager:
 - At least three (3) days prior to the start of construction.
 - Within 14 days after completion of construction at the project site.Notification, referencing Corps Reference #NWS-2013-1100, Order #10628 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.
- F3. If the project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit per Condition A2 a written construction status report and submit status reports every 12 months until construction is complete.

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:

Rebekah Padgett
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008
(425) 649-7129
rebekah.padgett@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 WAC – Sediment Management Standards

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

Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington

www.ecy.wa.gov/biblio/wac173200.html

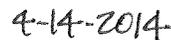
Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington

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

SIGNATURE



Erik Stockdale, Section Manager
Shorelands and Environmental Assistance Program
Northwest Regional Office



April 14, 2014

ATTACHMENT A

**PORT OF SKAGIT
PORT OF SKAGIT RUNWAY 11-29 RUNWAY SAFETY AREA (RSA)
GRADING PROJECT
Water Quality Certification Order #10628**

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

I have read and understand the conditions of Order #10628 Section 401 Water Quality Certification for the Port of Skagit Runway 11-29 Runway Safety Area (RSA) Grading Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

Signature

Date

Title

Company