



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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February 3, 2016

Erik Gerking  
Port of Everett  
PO Box 538  
Everett, WA 98206

RE: Water Quality Certification Order No. 13125 for Corps Public Notice No. NWS-2014-0890, Port of Everett Mill A Interim Cleanup, Snohomish County, Washington

Dear Mr. Gerking:

On June 24, 2015 the Port of Everett 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 Port of Everett Mill A Interim Cleanup, Snohomish County, Washington.

The proposed project is being conducted under the Model Toxics Clean-up Action (MTCA) Interim Cleanup Agreed Order No NE8979. The project includes dredging of up to 40,000 CY of sediment with upland and in-water disposal, as well as placement of armoring and mitigation for loss of shallow water habitat.

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 Laura Inouye at (360)-407-6165. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Brenden McFarland  
Shorelands and Environmental Assistance Program

Enclosure



Mr. Erik Gerking  
February 3, 2016  
Page 2

cc: Erin Legge, Corps of Engineers

by certified mail 7015 0640 0006 1040 9340

e-cc: ECY RE FEDPERMITS  
Loree Randall – HQ, SEA  
Laura Inouye– HQ, SEA  
Pete Adolphson– HQ, TCP  
Andrew Kallus –LCU, TCP

**IN THE MATTER OF GRANTING A ) ORDER #13125**  
**WATER QUALITY ) Corps Reference No. NWS-2014-0890**  
**CERTIFICATION TO ) Port of Everett Mill A Interim Cleanup in**  
**Port of Everett ) Everett, Snohomish County, Washington**  
in accordance with 33 U.S.C. 1341 )  
(FWPCA § 401), RCW 90.48.120, RCW )  
90.48.260 and Chapter 173-201A WAC )

TO: Erik Gerking  
Port of Everett  
PO Box 538  
Everett, WA 98206

On June 24, 2015 the Port of Everett 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 24, 2015.

This project is being conducted under the Model Toxics Clean-up Action (MTCA) Interim Cleanup Agreed Order No NE8979. The project includes dredging of up to 40,000 cubic yards of sediment over 1.7 acres. The majority of the dredge area will be performed to a depth of -43 feet mean lower low water (MLLW) which includes one foot of over-dredge. The southeastern edge of the dredge prism will be dredged to a maximum of -48 feet MLLW which includes one foot of over-dredge to create a trench for armor rock needed to stabilize the slope and contain contaminated sediment because the project area is partially located within the MTCA site. Dredging will be completed with a mechanical clam-shell dredge operated from the pier or a barge. The 22,790 cubic yards of unsuitable material will be disposed in an upland disposal area. The remaining 17,210 cubic yards were found to be suitable for unconfined disposal at the DMMP non-dispersive open-water disposal site in Port Gardner.

There is 1,500 square feet of existing armor rock located along the shoreline between the elevations of -2 feet MLLW and -43 feet MLLW that is used to contain contamination and stabilize the slopes. This rock will be removed to enable dredging, then 4,000 cubic yards of new armor rock will be installed over 23,000 square feet along the shoreline and the off-shore transition slope. The rock slope will remain 2H:1V.

To improve habitat conditions, a habitat mix of gravel/sand materials will be placed on top of the riprap over 3,600 square feet to fill interstitial voids along the shoreward edge of the wedge-shaped portion of the dredge footprint between elevations of -4 feet MLLW and -20 feet MLLW.

This project will result in the loss of 700 square feet of shallow water habitat, which will be mitigated through application of credits from the Port of Everett's Union Slough advance mitigation program.

**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 Everett 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 [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov). Any submittals shall reference Order #13125 and Corps Reference # NWS-2014-0890.
3. All notifications listed below shall be made via phone to Laura Inouye at (360)-407-6165, or e-mail at [lino461@ecy.wa.gov](mailto:lino461@ecy.wa.gov). These notifications shall be identified with Order

- #13125 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 each year.
4. Work authorized by this Order is limited to the work described in the Joint Aquatic Resources Permit Application (JARPA) received by Ecology on June 24, 2014, 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 Ecology's 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.
  - 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. The Applicant shall submit a water quality monitoring plan to Ecology per Condition A2 at least 30 days prior to the pre-dredge meeting. This plan shall be approved by Ecology prior to any in-water work. The plan shall include at a minimum the following information:

- a. Name and contact information of the person or firm responsible for monitoring;
  - b. Map of sample locations including background, and early warning location (75-100 ft from activity), and point of compliance with readings at or near the surface, midway, and bottom depths for all locations. For this project the point of compliance is a radius of 150 feet from the activity causing the turbidity exceedance.
  - c. Parameter(s) to be monitored: turbidity, DO
  - d. Sample method;
  - e. Frequency (intensive and routine), and
  - f. Steps to be taken if monitoring results indicate an exceedance at the point of compliance, or an elevation at the early warning point has occurred. The amount of the exceedance/elevation and the reason for the exceedance/elevation shall also be reported.
2. Water quality monitoring will be implemented according to the approved plan; any changes must be approved by Ecology prior to implementation.
  3. Turbidity monitoring reports shall be sent weekly to the 401/CZM Federal permit coordinator. The permit coordinator shall be contacted within 2 hours if an exceedance occurs during dredging of material unsuitable for in-water disposal, and within 24 hours for material suited for in-water disposal.

**D. Dredging:**

1. All dredging is to be done using a clamshell dredge or fixed-arm excavator. **Use of any other type of equipment requires preapproval from Ecology.**
2. 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.
3. Dredged material shall not be stockpiled on a temporary or permanent basis below the ordinary high water line.
4. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.
5. Caution shall be used when placing material from the bucket into the scow to limit splash and prevent spillage, especially when working with material not suited for in-water disposal.
6. The Dredge operator shall not overfill the scow to the point where dredge material overtops the sidewalls. When working with material not suited for in-water disposal, neither dredge material nor associated water is allowed to overtop the sidewalls.
7. Grounding out of vessels is not allowed.

8. Dredge cycles will be complete; partial loads will not be returned.
9. Leveling out with bucket or drag beam is not allowed.
10. Float booms will be used around in-water equipment at the dredge site to control floating debris.
11. All unsuited material along with a one foot buffer into the suitable material will be removed prior to commencing dredging of material suitable for in-water disposal.
12. A post-dredge survey must be conducted after completion of dredging of the unsuitable material to ensure complete removal of the unsuitable material. The removal completion survey must be approved by Ecology prior to starting dredging the suitable material.
13. A pre-dredge meeting is required to be convened at least one week prior to the start of dredging. A **Dredging Plan** and **Spill Prevention, Control and Countermeasures (SPCC) Plan** are 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 30 days prior to the pre-construction meeting.

**E. Disposal**

1. All dredged material designated unsuitable for in-water disposal will be taken to an Ecology-approved upland location.
2. All dredged material designated suitable for in-water disposal will be taken to the Port Gardner non-dispersive open water disposal site via bottom dump barge. **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 dredging or disposal area shall also be removed.

**F. Armor placement**

1. Grounding out of vessels is not allowed.
2. Appropriate BMPs shall be implemented to minimize turbidity associated with placement of armoring.
3. Imported materials will be tested prior to placement to ensure material are free of contaminants.

## **G. Transloading**

1. A transloading plan must be submitted to Ecology for review and approval at least 30 days prior to the pre-dredge meeting. Early coordination is strongly encouraged.
2. Transloading shall use appropriate BMPs to protect both the waterbody where transfer is occurring and the stormwater system at the transload site.
3. No dewatering is allowed during transit of barges from the project site to the transload site.

## **H. Mitigation**

1. The Applicant shall notify Ecology of any changes to the amount of aquatic resource impacts, or revisions to the mitigation plan.
2. Prior to impacting aquatic resources, the Applicant shall submit to Ecology documentation from the Port of Everett's Union Slough advance mitigation program verifying the purchase of credits from the Port of Everett's Union Slough advance mitigation program. This must be sent to Ecology at least 2 weeks prior to the pre-dredge meeting. This documentation must include:
  - a) The permit number
  - b) Permit issuance date
  - c) Impact acreage
  - d) The amount of credits required by the permit, and
  - e) The date of credit purchase.
3. The Applicant shall complete the purchase of credits before the impacts to aquatic resources occur or Ecology may require additional compensation to account for temporal loss of aquatic resource 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. Port of Everett Mill A Interim Cleanup
  - b. When credits will be purchased.With the:
  - c. Expected date of completion.
  - d. Reason for the delay.
5. The Applicant shall submit an updated written notification every 12 months thereafter until Port of Everett Mill A Interim Cleanup is complete and the required credits are purchased.

**I. Timing Requirements:**

1. All in-water work shall not occur between February 16 through August 14. Any project change that requires change or extension to the in-water work window shall be sent to Ecology for approval.
2. This Order shall remain in effect until December 31, 2017.

**J. Notification Requirements:**

1. The Applicant shall provide notice to Ecology's Federal permit coordinator at least 7 days prior to the start of construction or dredging and within 14 days after completion of construction or dredging at the project site. Notification should be made using all the information required in Condition A2.

**K. 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 Federal permit coordinator at (360) 407-6165.

- 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**

<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 Road SW STE 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

## **CONTACT INFORMATION**

Please direct all questions about this Order to:

Laura Inouye  
Department of Ecology  
Headquarters  
PO Box 47600  
  
Olympia, WA 98504-7600  
  
(360)-407-6165  
[Lino461@ecy.wa.gov](mailto:Lino461@ecy.wa.gov)

## **MORE INFORMATION**

### **Pollution Control Hearings Board Website**

[www.eho.wa.gov/Boards\\_PCHB.aspx](http://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](http://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](http://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](http://www.ecy.wa.gov/biblio/wac173201A.html)

## **SIGNATURE**

Dated February 3, 2016 in Olympia Washington



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

**ATTACHMENT A**

**Port of Everett  
Mill A interim Cleanup  
Water Quality Certification Order #13125**

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

I have read and understand the conditions of Order #13125 Section 401 Water Quality Certification for the Port of Everett Mill A Interim Cleanup. 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

