



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000
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September 23, 2016

Adam Fulton
Port of Bellingham
1800 Roeder Avenue
Bellingham, WA 98227

RE: Water Quality Certification Order #13777 for U.S. Army Corps of Engineers (Corps) Reference #NWS-2016-554, Squalicum Harbor Shoreline Repairs Project, in Bellingham, Whatcom County, Washington

Dear Mr. Fulton:

On June 2, 2016, you 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 Squalicum Harbor Shoreline Repairs 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,

Joe Burcar, Interim Section Manager
Shorelands and Environmental Assistance Program

JB:rrp:ap

Enclosure



Port of Bellingham
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By certified mail: 9171 9690 0935 0107 0220 25

Cc: Randel Perry, U.S. Army Corps of Engineers
Bob Warinner, Washington Department of Fish and Wildlife
William Haynes, Ashton Engineering, Inc.

E-cc: Chad Yunge – BFO
Loree' Randall – HQ
Greg Stegman – NWRO
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A)	ORDER #13777
WATER QUALITY)	Corps Reference #NWS-2016-124
CERTIFICATION TO)	Port of Bellingham Squalicum Harbor Shoreline
Port of Bellingham)	Repairs Project; Squalicum Harbor, Bellingham,
in accordance with 33 U.S.C. 1341)	Whatcom County, Washington.
(FWPCA § 401), RCW 90.48.120, RCW)	
90.48.260 and Chapter 173-201A WAC)	

TO: Port of Bellingham
 Attn: Adam Fulton
 1800 Roeder Avenue
 Bellingham, WA 98227

On June 2, 2016, Port of Bellingham submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. The U.S. Army Corps of Engineers (Corps) approved the above project under Nationwide Permit #13, Bank Stabilization. Ecology distributed a public notice regarding the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on August 24, 2016.

The proposed project includes placement of approximately 270 cubic yards of quarry spall and 0.5 cubic yard of compacted gravel or controlled density fill along approximately 250 feet of shoreline to address erosion affecting the existing asphalt pathway and gangway.

The project is located at 2655 South Harbor Loop Drive, Zuanich Park, Bellingham, Whatcom County, Washington, Squalicum Harbor, Section 25, T. 38 N., R. 2E., WRIA 1.

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 it has reasonable assurance 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 because of project construction or operations.

A. General Conditions:

- A1. For purposes of this Order, the term "Applicant" shall mean Port of Bellingham 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: Section 401/CZM Federal Permit Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #13777 and Corps Reference #NWS-2016-554.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on June 2, 2016. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA and JARPA Amendment 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. 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.

- A6. 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.
- A7. 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.
- A8. 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.
- A9. 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.
- A10. 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. Water Quality Conditions:

- B1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-210(1)(e)(i).
- B2. In-Water Construction Water Quality Sampling and Monitoring: A Water Quality Protection and Monitoring Plan (Plan) shall be developed and implemented for all in-water construction activities. "In-water construction" is defined as all work below the ordinary high water mark of Squalicum Harbor.

The Plan shall include the following minimum requirements:

- a. Locations of samples: Locations of water quality sampling sites shall be identified and described in the Plan and on a map of the project area. At a minimum, sampling shall take place at the point of compliance as specified in WAC 173-201A-210(1)(e)(i), which allows a 150-foot temporary area of mixing for turbidity resulting from

disturbance of in-place sediments in Squalicum Harbor. Background samples shall be collected outside the area of influence of the in-water work. Background samples shall be collected at the same frequency as the point of compliance samples.

- b. Number of samples: Number and frequency of water quality samples to be taken.
- c. Parameter to be sampled: Turbidity shall be sampled for this project.
- d. Equipment: Sampling for turbidity is to be accomplished using a turbidometer properly calibrated according to the operator's manual.
- e. Best Management Practices (BMPs): A description of the BMPs that will be used during construction to protect water quality.
- f. Detection of exceedances: Water quality standards for turbidity in "Excellent" waters are as follows: turbidity shall not exceed 5 NTU over background conditions when the background is 50 NTU or less, or a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. If exceedances of this standard at the point of compliance specified in WAC 173-201A-210(1)(e)(i) is detected through water quality sampling and monitoring, the Applicant shall immediately take action to stop, contain, and prevent unauthorized discharges or otherwise stop the violation and correct the problem. After such an event, the Applicant shall assess the efficacy of the site BMPs and update or improve the BMPs used at the work site in an effort to reduce or prevent recurrence of the turbidity exceedance.
- g. Reporting: If no exceedances are detected, results of water quality sampling, as determined by the Plan, shall be forwarded to Ecology on a monthly basis in accordance to Condition A2.
- h. Notification of exceedances: Notification of exceedances that are detected through water quality sampling shall be made to Ecology within 24 hours of occurrence. Notification shall be made with reference to Order #13777, Attn: 401/CZM Federal Permit Manager, by telephone at (425) 649-7129 or (425) 649-7000, or by fax to (425) 649-7098. The Applicant shall, at a minimum, provide Ecology with the following information:
 - i. A description of the nature and cause of exceedance.
 - ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance.
 - iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.

- iv. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the exceedance, turbidity results and location, photographs, and any other pertinent information.

C. Conditions for Construction Activities:

- C1. 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.
- C2. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- C3. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- C4. 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.
- C5. 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.
- C6. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology that fisheries resources may be adversely affected.
- C7. All manmade debris that has been deposited below the Ordinary High Water Line (OHWL) within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Concrete rubble, metal debris, and other debris in the construction work corridor that have washed into marine areas shall be removed from the project area.
- C8. The Applicant shall not conduct work when the project area is inundated by tidal waters, to the maximum extent practicable.
- C9. Project activities shall be conducted to minimize siltation of the beach area and bed.

- C10. The Applicant shall operate the barge(s) and tug in deep water to minimize nearshore propeller wash impacts such as suspension of nearshore sediments.
- C11. Barges and other work vessels shall not be allowed to groundout during construction.
- C12. The turbidity curtain shall be properly deployed and maintained during in-water activities in order to minimize turbidity and re-suspension.

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 Section 401/CZM Federal Permit 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. In-water work shall be conducted between August 1 and February 14 of any year, unless otherwise approved by Ecology.
- E2. This Order is valid until March 18, 2018.

F. Reporting and Notification Requirement Conditions

- F1. Applicant shall provide notice to Ecology's Section 401/CZM Federal Permit 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-2016-554, Order #13777 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.
- F2. 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 or this Order expires.

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.) Email 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 Road 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>

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 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



Joe Burcar, Interim Section Manager
Shorelands and Environmental Assistance Program
Northwest Regional Office

9-23-2016

Date

ATTACHMENT A

**PORT OF BELLINGHAM
SQUALICUM HARBOR SHORELINE REPAIRS PROJECT
Water Quality Certification Order #13777**

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

I have read and understood the conditions of Order #13777 Section 401 Water Quality Certification for the Port of Bellingham Squalicum Harbor Shoreline Repairs Project. I have also read and understood all permits, plans, documents, and approvals associated with the project referenced in this Order.

Signature

Date

Title

Company