



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
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September 15, 2011

Mr Robert Donnelly
US Army Corps of Engineers
Navigation Section
PO Box 3755
Seattle WA 98124-3755

RE: Water Quality Certification - Order #8727/Corps Public Notice # CENWS-OD-TS-NS-39
Maintenance dredging of the Upper Duwamish River and Turning Basin

Dear Mr. Donnelly:

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 1410 0002 4001 1712

Enclosure



cc: John Hicks, Corps
Laura Arber, WDFW
Lionel Klikoff, WDNR
City of Seattle, Office of the Mayor
Seattle Public Utilities
Delta Marine
Glenn St Amant, Muckleshoot Tribe

ecc: Loree' Randall, Ecology
Helen Pressley, Ecology
Laura Inouye, Ecology
Brad Helland, Ecology
Joe Burcar, Ecology
ecyrefedpermits

IN THE MATTER OF GRANTING A) ORDER #8727
WATER QUALITY) Corps Reference No. CENWS-OD-TS-NS-39
CERTIFICATION TO) Maintenance dredging of the upper Duwamish
US Army Corps of Engineers) Waterway and Turning basin, Seattle, King
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: Mr Robert Donnelly
US Army Corps of Engineers
Navigation Section
PO Box 3755
Seattle WA 98124-3755

On February 14, 2011 the US Army Corps of Engineers (Corps) submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on July 22, 2011.

The Corps proposes to maintain the Federal navigation channel in the upper Duwamish Waterway by mechanically (clamshell) dredging approximately 200,000 cubic yards during each dredging event between stations 242+00 and 275+56 (every one to three years) from FY2011 and continuing through Federal fiscal year 2018 (the Federal fiscal year runs from October 1 to September 30). The navigation channel will be dredge to the authorized depth of minus 15-feet with a 2-foot allowable overdepth (to minus -17, MLLW). The authorized dimension for the channel bottom width is 150 feet. The authorized dimensions for the channel's turning basin include a width of 250 feet and a length of 500 feet. The purpose of maintenance dredging is to maintain the efficiency and safety of deep-draft water transportation through the upper Duwamish Waterway.

Sediment that tests suitable for open water disposal will be loaded onto barges and towed by tug to the disposal site. Open water disposal is proposed to occur at the Washington State Department of Natural Resources open-water disposal site in Elliott Bay, Latitude 47 degrees 35.91 minutes, Longitude 122 degrees 21.45 minutes (NAD 83) in accordance with Dredge Material Management Program (DMMP) criteria established for disposal at the site.

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. For purposes of this Order, the term "Applicant" shall mean the US Army Corps of Engineers and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Headquarters Office, Attn: 401/CZM Federal permit coordinator, P.O. Box 47600 Olympia, WA 98504-7600 and/or hpre461@ecy.wa.gov. Any submittals shall reference Order #8727 and Corps Reference # CENWS-TS-NS-OD-39.
3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resource Permit Application (JARPA) received by Ecology on February 14, 2011. 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 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.
6. 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.
7. The Applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
8. 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.
9. 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.
10. 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.
11. 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 and Water Quality Monitoring Conditions

1. This Order authorizes temporary turbidity mixing zones of 600 feet down current from the dredging.
2. Ecology has reviewed the "USACE Water Quality Monitoring Plan for Maintenance Dredging" that we received on February 14, 2011. Ecology is requiring the Applicant to submit a revised Water Quality Monitoring Plan (WQMP) that includes all changes and additions to that Plan as modified by this Order. The revised Plan shall be

submitted per A.2. at least 14 days prior to any dredging or disposal. No dredging and disposal shall begin until Ecology approves the revised Plan.

3. The Applicant shall include the additional monitoring points and information identified below in the revised WQMP.
 - a. Monitoring points
 - i. Point of compliance - 600 feet down current of the dredging,
 - ii. Early warning - 300 feet down current of the dredging.
 - iii. 150 feet down current of the dredging
 - iv. A minimum of 100 feet up current from the dredging.
 - b. Name and contact information of the person or firm responsible for monitoring;
 - c. Map of sample locations including background along the 600 foot radius of compliance and an early warning radius at 300 feet, 150 feet at or near the surface, midway, and bottom depths. For this project the point of compliance is a radius of 600 feet from the activity causing the turbidity exceedance.
 - d. Parameter(s) to be monitored: turbidity, dissolved oxygen (DO) and salinity;
 - e. And use the turbidity criteria level of above 5 NTUs over background when the background is 50 NTUs or less; or a 10 percent increase in turbidity when the background turbidity is more than 50 NTUs are considered exceedances of the water quality standards.

NOTE: Results from sampling may NOT be averaged and must be reported individually.

4. If changes to the WQMP are proposed at anytime during the duration of this Order, the Applicant shall submit them to Ecology for review and approval. Following Ecology's approval, the Applicant shall comply with the approved, updated Plan.
5. If monitoring results demonstrate that the applicable water quality standards or project performance standards are not being met, Ecology may require additional monitoring and/or mitigation.
6. If exceedances¹ at the point of compliance are detected, the Applicant shall immediately take action to stop, contain, and take other steps to prevent further exceedances and otherwise stop the dredging and correct the problem. After the event, the Applicant shall assess the adequacy of the BMPs and update, or improve those used, to reduce and prevent recurrence of the turbidity exceedance.

¹ Turbidity levels above 5 NTUs over background when the background is 50 NTUs or less; or a 10 percent increase in turbidity when the background turbidity is more than 50 NTUs are considered exceedances of the water quality standards.

7. The Applicant shall notify Ecology's Federal Project Manager of any turbidity exceedances detected through water quality monitoring within 24 hours of the occurrence. Notification shall be made per condition A.2. The Applicant shall, at a minimum, provide Ecology with the following information:
 - a. A description of the nature and cause of exceedance.
 - b. The period of the exceedance, including precise dates, and when the Applicant returned, or expects to return to compliance.
 - c. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the exceedance.
 - d. In addition to the 24 hour notification, the Applicant shall submit a written report to Ecology that describes the nature of the exceedance, sampling results and location, photographs, and any other pertinent information within five (5) days after the exceedance. The report shall also identify what additional BMPs were, or will be, implemented to prevent further exceedances.
8. Turbidity monitoring reports shall be sent weekly to the 401/CZM Federal permit coordinator per condition A.2.

C. Dredging and Disposal:

1. All dredged material will be transported to the Elliott Bay open water disposal site using a bottom dump barge. **Use of any other method or location of disposal will require prior approval from Ecology.**
2. All dredging is to be done using a clamshell dredge. **Use of any other type of dredge will require prior approval from Ecology.**
3. 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.
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 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 as follows for potential contamination:

- High – Stations 242+00 to 254+00 (Section B) recency extends through April 2013
- Moderate – Stations 254+00 to 270+56 (Section A) recency extends through April 2016 to 2018
- Low – Stations 270+56 to 275+56 (Turning Basin) recency extends through April 2016 to 2018
- DMMU 15 was determined to be unsuitable (bioassay failure) and there was insufficient information to meet state antidegradation evaluation, therefore is not authorized to be dredged under this Order without further characterization. If DMMU 15 is re-evaluated and passes in-water evaluation and antidegradation evaluation, and it is determined that open water is acceptable dredging of DMMU 15 is authorized by this Order. However, if DMMU 15 fails either in-water evaluation or antidegradation evaluation, an amendment to this Order or a new Water Quality Certification will be required.

D. Timing Requirements:

1. This Order shall remain in effect for a period of 7 years from date of issuance. Continuing this project beyond the 7 year term of this Order will require separate certifications every 7 years.

E. 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.

F. 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.

G. Appeal Process:

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 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:

Helen Pressley
Department of Ecology SEA Program
PO Box 47600
Olympia WA 98504-7600
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 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

Order #8727, Corps No. CE 175-TS-NS-OD-39
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**Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of
Washington**

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

DATED 9-15-2011 at Olympia, Washington.



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

ATTACHMENT A

U.S. Army Corps of Engineers
Upper Duwamish turning basin & navigation channel dredging

Water Quality Certification Order #8727

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

I have read and understand the conditions of Order #8727 Section 401 Water Quality Certification for the Upper Duwamish turning basin & navigation channel dredging project. 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