



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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December 3, 2009

Mr. Hiram Arden  
U.S. Army Corps of Engineers  
Seattle District Navigation Section  
P.O. Box 3755  
Seattle WA 98124-3755

RE: Water Quality Certification - Order #7241/Corps Public Notice CENWS-OD-TS-NS-30 - Annual maintenance dredging of up to 400,000 cubic yards (cy) of material annually from the Snohomish River navigation channel and upper and lower settling basins in Snohomish County, Washington

Dear Mr. Arden:

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,

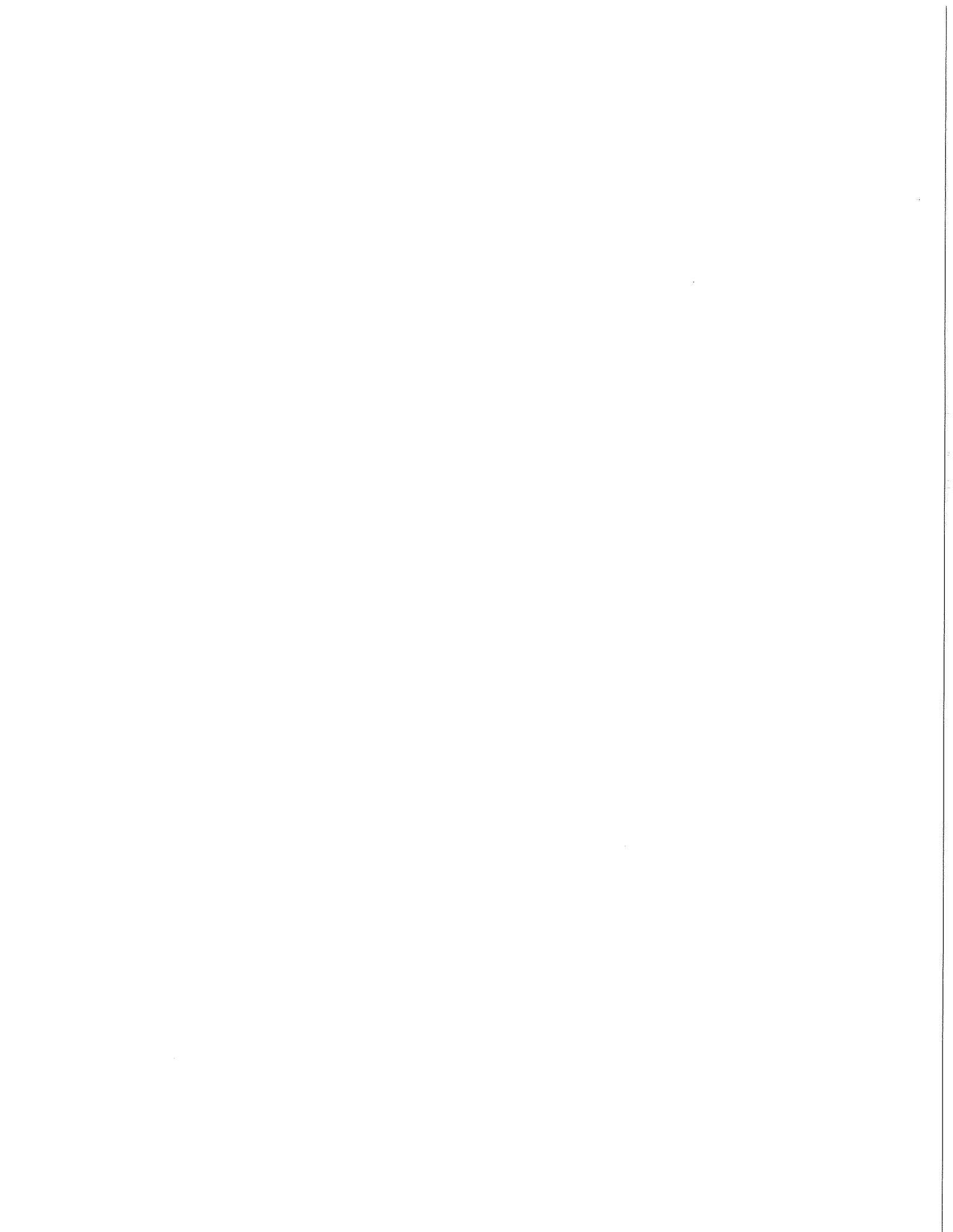
Brenden McFarland, Section Manager  
Shorelands & Environmental Assistance Program  
Headquarters Office – Ecology  
State of Washington

**CERTIFIED MAIL**

ecc: Loree' Randall, Ecology  
David Pater, NWRO, Ecology  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)

Helen Pressley, Ecology  
Laura Inouye, Ecology





**IN THE MATTER OF GRANTING A ) ORDER #7241**  
**WATER QUALITY ) Corps Reference No. CENWS-OD-TS-NW-30**  
**CERTIFICATION TO ) Annual maintenance dredging of up to 400,000**  
**U.S. Army Corps of Engineers ) cubic yards (cy) of material annually from the**  
in accordance with 33 U.S.C. 1341 ) Snohomish River navigation channel and upper  
(FWPCA § 401), RCW 90.48.120, RCW ) and lower settling basins in Snohomish County,  
90.48.260 and Chapter 173-201A WAC ) Washington

TO: Mr. Hiram Arden  
U.S. Army Corps of Engineers  
Seattle District Navigation Section  
P.O. Box 3755  
Seattle WA 98124-3755

On September 10, 2009 the U.S. Army Corps of Engineers 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) and Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on April 30, 2009.

The proposed work continues annual maintenance dredging by clamshell and pipeline dredges of up to an estimated 200,000 to 400,000 cubic yards (cy) of sediment annually from the Snohomish River navigation channel and settling basins at Everett Harbor. Placement of the resulting material will be in an existing approved open water disposal site, nearshore nourishment sites on Jetty Island to protect and preserve the Jetty Island salt marsh, and other suitable beneficial use placement areas that become available. Table 1 that follows contains the quantity of material expected to be removed by reach, dredge type, depth, disposal area, and fisheries work period from October 16 through 14 February of each year.

Table 1. FY2010-2020 Maintenance Dredging Program by Federal Navigation Channel Feature

FEDERAL NAVIGATION CHANNEL FEATURE	ESTIMATED VOLUME (CY)	DREDGE TYPE	CHANNEL DIMENSIONS <sup>1</sup> Depth at Mean Lower Low Water datum (mllw)	DISPOSAL AREA(S)	WORK SCHEDULE (Fisheries window)
Snohomish River, Deep-Draft Channel	50,000 annually	Clamshell or Pipeline	-15' mllw 150-425' wide	Port Gardner open water site, Jetty Island or Beneficial Use	16 Oct to 14 Feb
<i>Downstream Settling Basin</i>	150,000-300,000 biennially	Clamshell or Pipeline	-20' mllw 1200 long, 700' wide	Port Gardner open water site, Jetty Island or beneficial use	16 Oct to 14 Feb

FEDERAL NAVIGATION CHANNEL FEATURE	ESTIMATED VOLUME (CY)	DREDGE TYPE	CHANNEL DIMENSIONS <sup>1</sup> Depth at Mean Lower Low Water datum (mllw)	DISPOSAL AREA(S)	WORK SCHEDULE (Fisheries window)
Snohomish River, Shallow Draft Channel	50,000 Annually	Pipeline or Clamshell	-8' mllw 150' wide	Upland rehandling for beneficial use or Port Gardner open water site	16 Oct to 14 Feb
Upstream Settling Basin	100,000 - 200,000 biennially	Pipeline or Clamshell	-40' mllw 1,740' long, 30' wide	Upland rehandling for beneficial use or Port Gardner open water site	16 Oct to 14 Feb

Notes:

<sup>1</sup> Depths shown are authorized depths and do not include 2' overdepth tolerance. Widths shown are those of the channel bottom, and do not include extra width at channel bends. The deep-draft channel was deepened by the Port of Everett to minus 35 ft at MLLW in 1979 but has since shoaled in to controlling depths shallower than the Corps deep-draft channel depth of -15 ft at MLLW. Upstream settling basin dredging volume is often limited by disposal site capacity so dredging to -40ft @MLLW is infrequent compared to the -30 ft @MLLW most common dredging depth.

Beneficial use is the preferred method of disposal for the proposed work. Three proposed beneficial uses on Jetty Island are as follows:

- Continued nourishment of the Jetty Island berm, an eroding sand berm that protects a highly-productive intertidal saltmarsh. Renourishment has been required periodically since initial berm construction with Snohomish River dredge material in 1989. Nourishment was last performed in February 2009.
- Expansion of the island to the south along the existing rock jetty. The Island was expanded to the south in 2007 and additional expansion is sanctioned as a habitat enhancement project in the Snohomish River Basin Salmon Recovery Plan. Expansion placement of dredged materials was last conducted in February 2007.
- Continued suppression of areas on non-native upland plant species. Areas of Scotch broom and blackberry have been covered with clean dredge material in conjunction with river channel maintenance dredging projects. Scotch broom and blackberry suppression was last performed in February 2009.

The balance of the maintenance dredge material will be disposed at upland and rehandling sites provided by the Port of Everett and/or at the existing Port Gardner Open Water Disposal site managed by the Washington State Department of Natural Resources (WADNR).

The purpose of channel maintenance dredging is to maintain the efficiency and safety of water transportation in Everett Harbor.

**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, 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 U.S. 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 #7241 and Corps Reference # CENWS-OD-TS-NS-30.

3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resource Protection Application (JARPA) received by Ecology on September 9, 2009. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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:**

1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A except as otherwise authorized by this order.

### **C. Water Quality Monitoring**

1. The Applicant shall submit a water quality monitoring plan to Ecology per Condition A2 at least 14 days prior to dredging. 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, 150 foot early warning and the 300 foot point of compliance at or near the surface, midway, and bottom depths. For this project the point of compliance is a radius of 300 feet from the activity causing the turbidity exceedance.
  - c. Parameter to be monitored: turbidity;
  - d. Sample method;
  - e. Frequency, and
  - f. Steps to be taken if monitoring results indicate an exceedance has occurred.
2. Turbidity monitoring reports shall be sent weekly to the 401/CZM Federal permit coordinator. The permit coordinator shall be contacted within 24 hours if an exceedance occurs.

### **D. Dredging and Disposal:**

1. All dredging is to be done using either a clamshell or pipeline dredge. Use of any other type of dredge will require prior approval from Ecology. Each pass of the clamshell dredge bucket shall be complete.
2. All dredged material will be transported as per the locations indicated in Table 1.
3. 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.
4. Dredging and disposal 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. The pipeline dredge shall only be operated with the intake at or below the surface of the material being removed. The intake shall only be raised a maximum of three feet above the bed for brief periods of purging or flushing the intake system.
6. Dredged material shall not be stockpiled on a temporary or permanent basis below the ordinary high water line.
7. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.

8. A pre-dredge meeting is required to be convened prior to the start of each dredging season. A **Dredging Plan** is required and shall be submitted to Ecology for review and approval 2 weeks prior to the pre-dredging meeting. A copy of the plan shall be sent to the 401/CZM Federal permit coordinator at the address shown in Condition A2.
9. Prior to each dredging cycle, the Applicant shall contact the PSDDA 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 moderate in potential for contamination and the recency determination extends until September 2010.
10. Ecology must be informed if dredged material is going to be disposed of at an upland location that is suspected or a confirmed contaminated site. The disposal operation shall not be conducted prior to Ecology's reviewing and approving.

**E. Timing Requirements:**

1. Timing Limitations: The project may begin December 6, 2009 and shall be completed by December 31, 2011, provided:
  - a. Work below the ordinary high water line shall not occur from February 16 through September 14 of any year for the protection of migrating juvenile salmonids.
2. This Order shall remain in effect until December 31, 2011. Continuing this project beyond the term of this Order will require separate certifications.

**F. 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.

**G. 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.

#### **H. Appeal Process:**

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001 (2).

Be sure to do the following:

Include a copy of this document that you are appealing with your Notice of Appeal.

- Serve and file your appeal in paper form; electronic copies are not accepted.

#### **1. To file your appeal with the Pollution Control Hearings Board**

Mail appeal to:

The Pollution Control Hearings Board  
PO Box 40903  
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board  
4224 – 6th Ave SE Rowe Six, Bldg 2  
Lacey, WA 98503

**2. To serve your appeal on the Department of Ecology**

Mail appeal to:

The Department of Ecology  
Appeals Coordinator  
P.O. Box 47608  
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology  
Appeals Coordinator  
300 Desmond Dr SE  
Lacey, WA 98503

**3. And send a copy of your appeal to:**

Department of Ecology  
Shorelands and Environmental Assistance Program  
Attn: Helen Pressley  
P.O. Box 47600  
Olympia WA 98504-7600

For additional information visit the Environmental Hearings Office Website:  
<http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website:  
<http://www1.leg.wa.gov/CodeReviser>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

DATED December 3, 2009 at Olympia, Washington.



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

**ATTACHMENT A**

**U. S. Army Corps of Engineers  
Snohomish Navigation Channel Dredge  
Water Quality Certification Order #7241**

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

I have read and understand the conditions of Order #7241 Section 401 Water Quality Certification for the Snohomish Navigational Channel Dredge. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title