



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

*Northwest Regional Office 3190 160th SE Bellevue, Washington 98008-5452 (425) 649-7000*

August 15, 2011

Richard Smith  
15227 148th Ct. East  
Orting, WA 98360

**RE: Ecology Denial for Section 401 Water Quality Certification for the Conrad Property Project, Bothell, Snohomish County, Washington**

Dear Mr. Smith:

The U.S. Army Corps of Engineers (Corps) issued a Nationwide Permit #39 authorization for the above project on February 18, 2011. The Washington State Department of Ecology (Ecology) has 180 days to determine if an individual Section 401 Water Quality Certification (401 Certification) would be required. On March 21, 2011, Ecology notified your agent, Talasaea Consultants, Inc. (Talasaea), that this project would require an individual 401 Certification and requested additional information. A certified letter confirming that an individual 401 Certification and Coastal Zone Management Consistency determination would be required and requesting additional information was sent on May 18 2011. On May 31, 2011, Ecology issued a public notice regarding your application for a 401 Certification.

We determined that your application for an individual 401 Certification was incomplete and sent you a certified letter on July 21, 2011 detailing the specific information needed to complete your application and stating that if Ecology did not receive all of the required documentation by August 12, 2011, Ecology would deny the 401 Certification for this project. We identified the following informational needs that Ecology needed in order to complete our review in order to issue our decision:

- Status of your State Environmental Policy Act (SEPA) review or final SEPA determination,
- Revised mitigation plan, and
- Project design revisions.

To date, Ecology has not received the needed documentation. We have attached a project chronology that shows that we have been trying to work with you to get the needed information in order to process your request for a 401 Certification; however, we have not received the information. Therefore, pursuant to Section 401 of the Clean Water Act, ch. 90.48 RCW and ch. 173-201A WAC, the Conrad Property water quality certification is denied without prejudice.

Receipt of a denial without prejudice does not preclude Richard Smith from resubmitting a request for 401 Certification at a later date.

### **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**

<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 Rd 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:

Rebekah Padgett  
Department of Ecology  
Northwest Regional Office  
3190 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008  
(425) 649-7129  
Rebekah.Padgett@ecy.wa.gov

**MORE INFORMATION**

**Pollution Control Hearings Board Website**

[http://www.eho.wa.gov/Boards\\_PCHB.aspx](http://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 90.48 RCW – Water Pollution Control**

<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>

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

<http://www.ecy.wa.gov/biblio/wac173201A.html>

**SIGNATURE**



Erik Stockdale, Unit Supervisor  
Wetlands/401 Unit  
Shorelands and Environmental Assistance Program  
Northwest Regional Office

August 15, 2011

ES:pa:rrp:cja

Enclosure

**By certified mail: 7011 0470 0003 3720 8926**

Cc: Erin Legge, U.S. Army Corps of Engineers  
William Shiels, Talasaea Consultants, Inc.

E-cc: Paul Anderson, Ecology  
Loree' Randall, Ecology  
Raman Iyer, Ecology  
Matthew Baerwalde, Snoqualmie Tribe  
Randy Middaugh, Snohomish County  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)

## Attachment 1: Conrad Property WQC Permitting Chronology

- 11/24/10 Ecology received the project Joint Aquatic Resources Permit Application (JARPA) form prepared by Talasaea Consultants, Inc. (Talasaea).
- 2/18/11 Ecology received a copy of the Corps' Nationwide Permit #39 authorization for the project.
- 3/3/11 Paul Anderson, Ecology Wetland Specialist, called Erin Ericson, Talasaea, Inc., to express concerns with the proposed wetland buffer and request the wetland rating form figures that should have been included with the original submittal to Ecology.
- 3/14/11 Erin Ericson sent the wetland rating form figures and a letter to Paul Anderson via email. The letter responded to Ecology's concerns with the proposed wetland buffer
- 3/21/11 Paul Anderson sent an email to Erin Ericson (copied to Bill Shiels, Talasaea) detailing Ecology's concerns with the wetland rating and proposed mitigation and buffers. This email also included Ecology's determination that as proposed, the project would require an individual Section 401 Water Quality Certification (401 Certification) and that the project needed to be significantly revised before Ecology could approve the 401 Certification.
- 4/21/11 Erin Ericson sent an email to Paul Anderson with a letter attached that responded to Paul's March 21, 2011 email.
- 5/9/11 Paul Anderson called Bill Shiels to discuss the submittal and again express Ecology's concerns that the proposed buffer on Wetland B was not adequate to protect wetland functions. Paul also requested a revised site plan incorporating the recommended changes.
- 5/12/11 Bill Shiels sent an email to Paul Anderson in response to the May 9<sup>th</sup> telephone conversation and included a revised site plan showing a buffer averaging 57 feet along Wetland B.
- 5/18/11 Ecology sent a letter by Certified Mail to Bill Shiels (copied to Richard Smith), informing him that an individual 401 Certification and Coastal Zone Management Act consistency determination would be required for the Conrad Storage project.
- 5/31/11 Ecology issued Public Notice for the project 401 Certification and Coastal Zone Management Act consistency determination.

Richard Smith  
Conrad Property Attachment 1  
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- 7/5/11 Paul Anderson and Rebekah Padgett, Ecology Federal Permit Manager, called Bill Shiels to discuss the status of the project and left a voicemail requesting a return call.
- 7/14/11 Paul Anderson and Rebekah Padgett called Bill Shiels to discuss the status of the project.
- 7/14/11 Rebekah Padgett sent an email to Bill Shiels and attached a copy of the JARPA Withdrawal Form that had been discussed during that morning's telephone call.
- 7/18/11 Bill Shiels sent an email to Rebekah Padgett indicating that Richard Smith (applicant) had elected to not withdraw the application but rather allow the project to be denied.
- 7/21/11 Rebekah Padgett sent a letter by Certified Mail to Richard Smith (copied to Bill Shiels) stating that project 401 Certification would be denied if the status of the project SEPA review or final SEPA determination, a revised mitigation plan, project design revisions, and CZM consistency determination statement form were not received at Ecology by August 12, 2011.