STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
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July 27, 2007

REGISTERED MAIL

Mr. Hiram Arden
U.S. Army Corps of Engineers
Seattle District Navigation Section
P.O. Box 3755
Seattle WA 99124-3755

RE: Water Quality Certification - Order #4878/Corps Public Notice CENWS-OD-TS-NS-23 – Dredging of the Federally authorized navigation channel to provide seagoing vessels with commercial access to the Port of Olympia Marine Terminal in Budd Inlet, Puget Sound, Thurston 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.

Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the Applicant's determination that this work is consistent with the approved Washington State Coastal Zone Management Program.

If you have any questions concerning the content of this letter, please contact Helen Pressley at (360) 407-6076.

Sincerely,

Brenden McFarland, Section Supervisor
Environmental Review and Transportation Section Manager
Shorelands and Environmental Assistance Program

cc: Evan Lewis, Corps
Penny Keys, Ecology

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO U. S. Army Corps of Engineers in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	))))))	**ORDER # 4878** **Corps Reference No. CENWS-OD-TS-NS-23** Maintenance dredging of the federally authorized Olympia Harbor navigation channel in Budd Inlet, Puget Sound, Thurston County, Washington

TO: Mr. Hiram Arden
Army Corps of Engineers
Post Office Box 3755
Seattle WA 98124-3755

The proposed project includes maintenance dredging and minor widening of the federally authorized Olympia Harbor navigation channel. The purpose of this dredging is to allow timely and safe passage of ships entering and leaving the Port of Olympia. A public notice was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project on May 3, 2007.

The proposed work consists of dredging and disposal of approximately 101,000 cubic yards (cy) of sediment. Of the 101,000 cy, 48,000 cy are from the channel, and 53,000 cy are from the widening area. The sediment has been tested according to the *"Dredged Material Evaluation Procedures and Disposal Site Management Manual, Puget Sound, Washington"*. All 101,000 cy of material have been approved for unconfined open-water disposal at the Anderson-Ketron PSDDA disposal site and/or used beneficial at other approved sites. This project does not include any dredging at the Port of Olympia berthing areas.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, 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 not violate 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:

A1. For purposes of this Order, the term "Applicant" shall mean the U. S. Army Corps of Engineers (Corps) and its agents, assignees and contractors.

A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Headquarters Office, Attn: 401/CZM Federal Project Manager, P.O. Box 47600 Olympia, WA 98504-7600. Any submittals shall reference Order #4878 and Corps Reference # CENWS-OD-TS-NS-23.

A3. Work authorized by this Order is limited to the work described in the revised Joint Aquatic Resource Protection Application (JARPA) received by Ecology on July 20, 2007. 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.

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. This Order does not exempt, and is provisional upon, compliance with other statutes and codes administered by federal, state, and local agencies.

A6. 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.

A7. 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.

A8. 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.

A9. 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.

A11. 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.

A12. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars ($10,000) per violation for each day of continuing noncompliance.

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)(D). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup or surface waters or sediments occurring as a result of project construction or operations.

C. Water Quality Monitoring Requirements:

C1. The Applicant shall submit a copy of the Water Quality Monitoring Plan 30 days prior to dredging and disposal for Ecology's review. This plan shall include the following information:

- Name and phone number of person responsible for monitoring;
- Map of sample locations
- Parameter(s) to be monitored;
- Sample method; and

- Sample frequency.

C2. Turbidity shall be visually assessed and recorded at a minimum of every four (4) hours during periods of active in-water work. Monitoring points shall be 100 feet upcurrent (representative background), 150 and 300 feet downcurrent. A turbidimeter is recommended, however, visual gauging of turbidity is acceptable. Visible project-related turbidity at 150 feet downcurrent from the discharge point is considered to be an exceedance of the standard.

If turbidity exceedances are observed then that Applicant shall modify the activity causing the problem and continue to monitor every four (4) hours.

If exceedances occur during two (2) consecutive measurements (four (4) hours apart), stop the activity causing the turbidity until the problem is resolved.

Reports of any exceedances should be forwarded to the Federal Permit Coordinator. Refer to Corps #CENWS-OD-TS-NS-23, Order #4878. Please either call (360) 407-6076 or, fax to (360) 407-6902, e-mail at hpre461@ecy.wa.gov or in writing.

D. Dredging and Disposal Activities:

D1. 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 substance into waters of the State.

D2. The dredged material from this project will be disposed of at the Anderson-Ketron unconfined open-water disposal site, used beneficially, or placed in an approved upland disposal site. Any potential beneficial use areas and/or upland disposal areas shall be reviewed and approved by Ecology prior to their use for this project.

D3. All dredging is to be done using a clamshell dredge. Use of any other type of dredge will require prior approval from the four DMMP agencies.

D4. 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. All debris shall be disposed of at appropriate upland locations.

D5. Each pass of the clamshell bucket shall be complete with no stockpiling allowed in the water.

D6. Only barges with low walls or other containment devices around the perimeter of the barge shall be used for storage of dewatering discharges and excavated sediments in order to prevent and minimize sediments and turbid waters from entering marine water.

D7. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.

E. Timing Requirements:

E1. This Order shall remain in effect for a period of five (5) years from date of issuance. Continuing maintenance dredging beyond the five year term of this Order will require separate certifications every five years.

a. Ecology reserves the option to reassess the terms of this Order and amend or revoke, as necessary, in the event that:

i. new sources of potential contamination are discharged or otherwise stand to significantly affect the quality of sediments dredged from Budd Inlet, or

ii. new information indicates that dredging and/or disposal activities are having a significant adverse impact on water quality or characteristic uses of Budd Inlet.

E2. In-water work shall only occur between July 15 and February 15. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination that fisheries resources may be adversely affected.

F. Emergency/Contingency Measures:

F1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.

F2. 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.

F3. 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.

F4. 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 spills causing a sheen or spillage of pollutants into waters of the state 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 401/CZM Federal Project Manager at (360) 407-6076.

d. The Applicant shall submit a detailed written report to Ecology within five (5) days of the incident 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.

G. Reporting and Notification Requirement Conditions:

G1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of construction and within 14 days after completion of construction at the project site. Notification, referencing Corps Reference #CENWS-OD-TS-NS-23, Order #4878 can take place by telephone to (360) 407-6076 or, fax to (360) 407-6902, e-mail at hpre461@ecy.wa.gov or in writing.

G2. A **Dredging Plan** is required. For any in-water disposal and shall be made available for review and approval at the pre-dredge meeting to be convened at the Seattle Corps of Engineers office prior to the start of dredging. One week prior to the pre-construction meeting, a copy of the plan shall be sent to the Federal Permit Coordinator, Department of Ecology, and P. O. Box 47600, Olympia WA 98504-7600 for review prior to the meeting.

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:

Helen Pressley
Department of Ecology
Headquarters Office
PO 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 July 27, 2007 at Lacey, Washington.

Brenden McFarland, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A

US Army Corps of Engineers
Water Quality Certification Order #4878

Statement of Understanding of
Water Quality Certification Conditions

I have read and understand the conditions of Order #4878 Section 401 Water Quality Certification for the maintenance dredging of the federally authorized Olympia Harbor navigation channel in Budd Inlet Project. I have also read and understand all permits, plans, documents, and approvals associated with the maintenance dredging of the federally authorized Olympia Harbor navigation channel in Budd Inlet Project referenced in this order.

_____ _____
Signature Date

_____
Title

_____
Company