



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
TTY 711 or 800-833-6388 (for the speech or hearing impaired)

REGISTERED MAIL

October 13, 2006

Mr. George Hart and Ms. Patty Miller
Army Corps of Engineers
P.O. Box 3755
Seattle WA 98124-3755

RE: Water Quality Certification - Order #3888/Corps Public Notice CENWS-OD-TS-NS-26 Dredging the Duwamish River Navigation Channel on the Duwamish River, King County, Washington

Dear Mr. George Hart and Ms Patty Miller:

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 letter also serves as the State response to the Corps of Engineers.

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.

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 the Order, please contact Helen Pressley at (360) 407-6076.

Sincerely,

A handwritten signature in black ink, appearing to read "Brenden McFarland".

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

Cc: Penny Keys, Ecology
Brad Helland, Ecology
George Hart, Biologist

COPY



IN THE MATTER OF GRANTING A)	ORDER # 3888
WATER QUALITY)	Corps Reference No. CENWS-OD-TS-NS-26
CERTIFICATION TO)	Maintenance of the navigation channel through
Army Corps of Engineers)	dredging 100,000 – 200,000 cubic yards of
in accordance with 33 U.S.C. 1341)	sediment approximately every 2 years in the
(FWPCA § 401), RCW 90.48.120, RCW)	Duwamish River, King County, Washington
90.48.260 and Chapter 173-201A WAC)	
)	
)	

TO: Army Corps of Engineers
 Post Office Box 3755
 Seattle WA 98124-3755

On September 7, 2006, the U.S. Army Corps of Engineers (Corps) submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification for Maintenance dredging within the Duwamish River navigation channel. The Corps issued a public notice for the above-referenced project on July 28, 2006.

The proposed project will include dredging of the Federal Navigation Channel and associated shoaled areas in the Duwamish Turning Basin by mechanically dredging using a clamshell dredge. A total of 100,000 – 200,000 cubic yards will be dredged in intervals of roughly every 2 years. The sediment, which was judged low to moderately contaminated will be disposed of at the Elliott Bay non-dispersive disposal site, or used beneficially.

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 Corps subject to the conditions within this Order.

Certification of this proposal does not authorize the Corps 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 #3888 and Corps Reference # CENWS- OD-TS-NS-26.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on September 7, 2006. The Applicant will be out of compliance with this Order and must reapply with an updated application 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 shall be rescinded if the US Army Corps of Engineers does not issue an individual Section 404 and Section 10 permit.
- A6. This Order does not exempt, and is provisional upon, compliance with other statutes and codes administered by federal, state, and local agencies.
- A7. 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.

- A8. 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.
- A9. 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.
- A10. 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. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(2) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). 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.
- B2. 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), 300 feet downcurrent, and at the discharge point. A turbidimeter is recommended, however, visual gauging of turbidity is acceptable. Visible

project-related turbidity at 300 feet downcurrent from the discharge point is considered to be an exceedance of the standard.

If turbidity exceeds:

5 NTU over background turbidity when the background turbidity is 50 NTU or less, or there is a more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU, Then 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.

C. Conditions for In-Water and Over-Water Construction Activities:

General Conditions:

- C1. In-water and upland staging area erosion control BMPs (e.g., filter fences, bubble curtains etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction or dredging at the site.
- C2. Work shall be accomplished per the "FY 2007-2011 Maintenance Dredging Turning Basin and Navigation Channel Upper Duwamish Waterway" dated July 13, 2006, and the "Endangered Species Act Section 7 Consultation Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation" dated April 20, 2006, except as modified by this Order.
- C3. Any construction or staging 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 dredging shall be serviced, fueled, and maintained upland where possible 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. During construction and dredging, a containment boom and absorbent pads shall be placed around the perimeter of the work area to capture wood debris and other materials released into the waters as a result of construction and dredging activities. Oil absorbent materials shall be employed if any floating oil sheen is observed. The boom shall remain in place until all oily material and floating debris have been collected and sheens

dissipate. All accumulated debris shall be collected and disposed of upland at an approved disposal site.

- C7. Petroleum spill containment materials shall be deployed in the water surrounding active work barges at all times.
- C8. 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.
- C9. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.
- C10. All manmade debris on the beach within the construction/dredging work area shall be removed and disposed of upland such that it does not enter waters of the state.

D. Timing Requirements

- D1. This Order is valid until all compliance requirements in this document have been met.
- D2. In-water work shall be subject to timing limitations imposed by either the National Marine Fisheries Service and/or by NOAA Fisheries. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by either agency that fisheries resources may be adversely affected.

E. Emergency/Contingency Measures

- E1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- E2. 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.
- E3. 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.
- E4. 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 401/CZM Federal Project Manager at (360) 407-6300 or (360) 407-6068.
- 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.

F. Reporting and Notification Requirement Conditions

- F1. 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 #200501237, Order #3854 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.
- F2. A **Dredging Plan** is required 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, PO Box 47600, Olympia WA 98504-7600 for review prior to the meeting.

G. Appeal Process

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order (3888) you are appealing.

Order # 3888 Corps Reference #CENWS-OD-TS-NS-26
Army Corps of Engineers
October 12, 2006
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Your appeal must be filed with:

The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:

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

In addition, please send a copy of your appeal to:

Federal Permit Appeals Coordinator
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

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

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 October 13, 2006 at Lacey, Washington.



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