



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

REGISTERED MAIL

RB 252 946 191 US

March 20, 2007

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 #4156/Corps Public Notice CENWS-OD- TS-NS-27 –
Test hopper dredging for a potential entrance channel realignment of the Grays Harbor
and Chehalis River Federal Navigation Channel in Grays Harbor and the mouth of the
Chehalis River, Grays Harbor 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 Manager
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program

COPY

cc: George Hart, Corps Penny Keys, Ecology



IN THE MATTER OF GRANTING A) ORDER # 4156
WATER QUALITY CERTIFICATION) Corps Reference No. CENWS-OD-TS-NS-27
TO U. S. Army Corps of Engineers) Hopper test dredging of a potential entrance channel
in accordance with 33 U.S.C. 1341 (FWPCA) realignment of the Grays Harbor Federal navigation
§ 401), RCW 90.48.120, RCW 90.48.260) channel in Grays Harbor and the mouth of the
and Chapter 173-201A WAC) Chehalis River, Grays Harbor County, Washington

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

A joint public notice was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on January 19, 2007.

The proposed project will include hopper test dredging in the Grays Harbor Federal navigation channel Entrance Channel and Point Chehalis Reaches for potential channel realignment in Grays Harbor and the mouth of the Chehalis River in Grays Harbor County, Washington. This dredging will remove approximately 110,000 cubic yards (CY) over approximately 36 acres of the sea floor to a depth of approximately -46 feet Mean Lower Low Water.

The purpose of this project is to determine if the channel can be realigned to significantly decrease channel maintenance dredging requirements without significantly increasing adverse impacts on the estuary's habitat and resources. The shoaling rate and patterns will be followed over the course of the year after completion of the test dredging. The Corps will also determine if the proposed realignment would enhance the safety of deep-draft water transportation in Grays Harbor.

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 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 #4156 and Corps Reference # CENWS-OD-TS-NS-27.
- A3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resource Protection Application (JARPA) received by Ecology on February 5, 2007. 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-210 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-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. Conditions for In-Water Activities:**
- C1. Work shall be accomplished per the Joint Aquatic Resource Protection Application, dated February 5, 2007, the *"FY 2007 Test Dredge and Disposal Grays Harbor and Chehalis River Navigation Project"* dated December 2006, and the *"Endangered Species Act Section 7 Informal Grays Harbor Test Dredge for Potential Entrance Channel Alignment in the Federal Navigation Channel, Grays Harbor County, Washington Request to Reinitiate (HUC1710010503, Grays Harbor)"* dated January 30, 2007, except as modified by this Order.
- C2. Any staging debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- C3. 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.
- C4. All dredging is to be done using a hopper dredge. Use of any other type of dredge will require prior approval from the DMMP agencies.
- C5. The 110,000 CY of dredged material from this project will be disposed of at the Point Chehalis open-water disposal site.

C6. 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.

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) 407-6076.
 - d. The Applicant shall 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. Mitigation Requirements:

- F1. Mitigation for this project shall be implemented as in the Conservation Measures described in the "Biological Evaluation Grays Harbor Test Dredge for Potential Entrance Channel Realignment Grays Harbor Navigation Project" dated March 2006.

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 #200501237, Order #4156 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 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.
- G3. A copy of bathymetric surveys or other reports developed for this project should be sent to the Federal Permit Coordinator at the above address.

H. 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 (4156) you are appealing.

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:

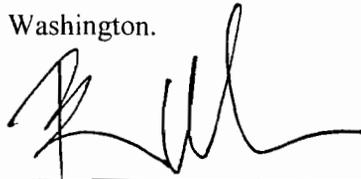
Federal Permit Appeals Coordinator
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

Order # 4156 Corps Reference #CENWS-OD-TS-NS-27
Army Corps of Engineers
March 20, 2007
Page 6 of 6

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 Mar 20, 2007 at Lacey, Washington.



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

ATTACHMENT A

**U. S. ARMY CORPS OF ENGINEERS
Grays Harbor Navigation Channel Test Dredging
Water Quality Certification Order #4156**

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

I have read and understand the conditions of Order #4156 Section 401 Water Quality Certification for the **Grays Harbor Navigation Channel Test Dredging**. I have also read and understand all permits, plans, documents, and approvals associated with the **Grays Harbor Navigation Channel Test Dredging Project** referenced in this order.

Signature

Date

Title

Company

Please make copies for all appropriate employees.