



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

December 22, 2006

REGISTERED MAIL

RB 336 145 067 US

Mr. George Blomberg
Port of Seattle
PO Box 1209
Seattle, WA 98111

Dear Mr. Blomberg:

RE: Water Quality Certification Order #3973 and Coastal Zone Management
Consistency Determination for U.S. Coast Guard (Coast Guard)
Reference #06-N-01 to Construct a New Bridge Across Slip 27 between
Terminals 25 and 30, Duwamish East Waterway, King County, Washington

On September 27, 2006, the Port of Seattle submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act (CWA) for the proposed Terminal 25/Terminal 30 Bridge project. The project proposes to construct a bridge connecting Terminals 25 and 30 across Slip 27 for movement of heavy cargo. The Coast Guard issued a joint public notice for a Bridge Permit on May 12, 2006, for the proposed project.

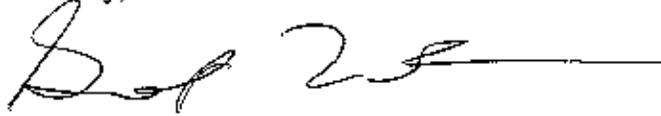
On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the September 27, 2006 JARPA and the May 12, 2006, public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

On September 27, 2006, the Port of Seattle submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the Port of Seattle's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon the Port of Seattle's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.



If you have any questions, please contact Rebekah Padgett at (425) 649-7129 or email at rp461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Geoff Tallent
Northwest Regional Office
Shorelands and Environmental Assistance Program

GI:rrp:cg
Enclosure

cc: Austin Pratt, U.S. Coast Guard
Laura Arber, Washington Department of Fish and Wildlife
Ravi Sanga, U.S. Environmental Protection Agency
Jonathan Freedman, U.S. Environmental Protection Agency

e-cc: Penny Keys – HQ
Loree Randall – HQ
Brad Helland – NWRO
Richard Robohm – NWRO

IN THE MATTER OF GRANTING A) ORDER # 3973
WATER QUALITY) U.S. Coast Guard Reference No. 06-N-01
CERTIFICATION TO) Construction of a New Terminal 25/Terminal 30
Port of Seattle) Bridge Across Slip 27; Duwamish East
in accordance with 33 U.S.C. 1341) Waterway, City of Seattle, King County,
(FWPCA § 401), RCW 90.48.120, RCW) Washington.
90.48.260 and Chapter 173-201A WAC)

TO: Port of Seattle
Attn: George Blomberg
Health, Environmental, and Risk Services
PO Box 1209
Seattle WA 98111

On September 27, 2006, the Port of Seattle submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the U.S. Coast Guard (Coast Guard) for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on May 12, 2006.

The proposed project is the construction of a bridge connecting Terminals 25 and 30 across Slip 27 for movement of heavy cargo. The Port of Seattle's Terminals 25 and 30 project includes: (1) removal of approximately 400 creosote piles, including removal of the rail barge loading facility at Pier 27 and a portion of the existing Pier 28 dock for a total of approximately 16,000 square feet of in-water and over-water structure to be removed; (2) construction of a 36-foot by 311-foot concrete-piling supported bridge connecting Terminals 25 and 30 at the east end of Slip 27 for movement of heavy marine cargo, to be supported by 59 24-inch-diameter concrete piles, for a total of 10,800 square feet of over-water structure; (3) planting of a 10-foot-wide riparian buffer on the south side of the slip; (4) clean sand may be placed as cap material in locations where creosote piling are extracted and; (5) associated upland activities.

The project is located at Slip 27 on the Duwamish East Waterway in Sections 7 and 18, T. 24 N., R. 4 E., WRIA 9 (Green-Duwamish Watershed).

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 Port of Seattle and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #3973 and Coast Guard Reference #06-N-01.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on September 27, 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 U.S. Coast Guard does not issue an individual Bridge 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 and all mitigation sites 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 or mitigation sites
- 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. The Duwamish Waterway is classified as Class B and the criteria of that class apply except as specifically modified by this Order. 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(1) 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 of surface waters or sediments occurring as a result of project construction or operations.

B2. Turbidity shall be monitored per the *Terminal 25/Terminal 30 Cargo Bridge Connection Construction Water Quality Monitoring Plan, Installation of Concrete Support Piling and Removal of Existing Derelict Creosote Piling*, dated December 21, 2006 (hereafter referred to as the "Water Quality Monitoring Plan"). Turbidity at 300 feet upstream or downstream of the discharge point is considered to be an exceedance of the standard. If an exceedance of 10NTU over background turbidity when the background turbidity is 50 NTU or less, or more than a twenty (20) percent increase in turbidity when the background turbidity is more than 50 NTU, occurs at 300 feet upstream or downstream of the project site, the Applicant shall follow the protocols and notification procedures outlined in the Water Quality Monitoring Plan.

B3. Notification and Submittal of Sampling Results:

- a) Per the Water Quality Monitoring Plan, a weekly summary of water quality sampling results shall be submitted by fax, referencing Coast Guard Reference #06-N-01, Order #3973, Attn: 401/CZM Federal Project Manager, to (425) 649-7098.
- b) Notification of exceedances that are detected through water quality sampling shall be made to Ecology within 24 hours of occurrence. The Applicant shall, at a minimum, provide Ecology with the following information:
 - i. A description of the nature and cause of non-compliance, including the quantity and quality of any unauthorized discharges;
 - ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance; and
 - iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
 - iv. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to

prevent a recurrence, results of any samples taken, photographs, and any other pertinent information.

- c) Sampling results for the following parameters shall be submitted to Ecology immediately, and no later than 72 hours after the samples are submitted to the lab: semi-volatile hydrocarbons (including polynuclear aromatic hydrocarbons [PAHs]), metals (including mercury), polychlorinated biphenyls (PCBs), tributyltin (TBT), and total suspended solids.

B4. Any modifications to the Water Quality Monitoring Plan shall be reviewed and approved by Ecology.

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

General Conditions:

- C1. Construction stormwater, sediment, and erosion control BMPs (e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
- C2. The Applicant shall implement and comply with the Construction Stormwater General Permit #WAR-007087 for this project.
- C3. Work shall be accomplished per the following plans, except as modified by this Order:
- Letter from George Blomberg, Port of Seattle, to Rebekah Padgett, Ecology, RE: Terminal 25/Terminal 30 Connecting Bridge, U.S. Coast Guard Public Notice: 06-N-01, Additional Project Information, dated 10/11/06;
 - *Piling and Pile Cap Plan*, Port of Seattle No. 25-0603-S2, dated 11/06, received by Ecology on December 11, 2006;
 - *Typical Bridge Cross Sections*, Port of Seattle No. 25-0603-S04, dated 3/28/06, received by Ecology on December 1, 2006;
 - Letter from George Blomberg, Port of Seattle, to Rebekah Padgett, Ecology, RE: Terminal 25/Terminal 30 Cargo Bridge Connection, Additional Project Information, dated 12/12/06; and
 - *Terminal 25/30 Connecting Bridge Project, Biological Evaluation and Essential Fish Habitat Assessment*, prepared by Grette Associates, LLC, dated 1/06.

- C4. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- C5. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
- C6. 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.
- C7. During construction, contaminated sediments and soils shall not be used as backfill material.
- C8. Floating, bottom-weighted turbidity/silt curtains shall be deployed and maintained in a functional manner to contain suspended sediments at the work site during in-water work. All accumulated debris shall be collected and disposed of upland at an approved disposal site. Oil absorbent materials (booms and pads) shall be deployed if floating oil sheen is observed. The boom shall remain in place until all oily material has been collected and the sheen has dissipated.
- C9. Petroleum spill containment materials shall be deployed in the water surrounding active work barges at all times.
- C10. During construction the Applicant shall have a boat available on site at all times to retrieve debris from the water.
- C11. The Applicant shall use tarps or other containment method when cutting or drilling over water to prevent sawdust and other materials from entering the water.
- C12. Construction material shall be stockpiled away from the shoreline areas.
- C13. All manmade debris within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state.
- C14. If cast in place, wet concrete/grout shall be prevented from entering waters of the state. Forms for any concrete/grout structure shall be constructed to prevent leaching of wet concrete/grout. Impervious materials shall be placed over any exposed concrete/grout not lined with the forms that will come in contact with state waters. Forms and impervious materials shall remain in place until the concrete/grout is cured.
- C15. The Applicant shall operate the barge(s) and tug in deep water so as to minimize nearshore propeller wash impacts such as suspension of river bottom sediments.

Piling Removal Conditions:

- C16. All creosote piling shall be removed by vibratory extraction. In the event pilings break off during extraction, the remaining piling may be removed by using a choker chain or a clamshell bucket, provided that the bucket is not operated below the mudline.
- C17. Approximately 40 percent of the estimated 400 existing creosote-treated pilings shall be completely extracted, removed from the river, and disposed of at an approved upland disposal site. If the pilings can not be completely removed, they shall be cut off at the mudline, using hydraulically operated mechanical shears or a pneumatic underwater chainsaw.
- C18. Up to 60 percent of the estimated 400 existing creosote-treated pilings shall be severed at substrate level and left in place for maintenance of slope stability. The pilings shall be severed at the substrate surface using hydraulically operated mechanical shears or a pneumatic underwater chainsaw. The pilings shall be disposed of at an approved upland disposal site.
- C19. Piles removed from substrate: the pile shall be moved immediately from the water onto the barge. The pile shall not be shaken, hosed-off, left hanging to drip or any other action intended to clean or remove adhering material from the pile.
- C20. Work surface on the barge deck shall include a containment basin for piles and any sediment removed during pulling of the piling. Basins may be constructed of durable plastic sheeting with sidewalls supported by hay bales or support structure to contain all sediment.
- C21. If a clamshell dredge is used, the minimum size bucket shall be used to pull out piles to minimize sediment disturbance and splintering of piling.
- C22. Piles, stubs, debris, and all associated excavated sediments shall be contained and prevented from entering waters of the state.

Pile Driving:

- C23. All new pilings shall be concrete.
- C24. The Applicant shall place a block of wood at least six (6) inches thick between the pile driver and the pile to minimize in-water noise.

D. Project Mitigation:

D1. Impacts to aquatic resources shall be mitigated through measures described in the following documents, except as modified by this Order:

- Plan sheets for the Terminal 25/30 Yard Expansion and Connecting Bridge project entitled "Landscape Plan" and "Landscape Plan Details" (sheets 25-0602-L01 and 25-0602-L02), as revised on October 25, 2006.
- Shoreline and SEPA conditions set forth in the City of Seattle's Analysis and Decision dated September 28, 2006.

D2. In addition to conditions in the above-referenced documents, the following requirements shall be conditions of this Order:

- a. Timing: Construction and installation of compensatory mitigation must occur at the first planting opportunity (late fall, winter, or early spring) after construction affecting planting areas is complete.
- b. Baseline Monitoring Report: A baseline monitoring report documenting the final design of the mitigation area must be prepared when site construction and planting are completed. The report shall include the following:
 - i. Vicinity map showing site access.
 - ii. Drawings that clearly identify in plan view the location and square footage of the planted area.
 - iii. The installed planting scheme showing approximate locations of plants and the time of planting.
 - iv. Photographs of the area taken from permanent reference points.
 - v. Locations of photopoints, and sampling sites.
 - vi. A description of any changes to the mitigation plan that occurred during construction.

A copy of the baseline monitoring report shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452, within 60 days of completing installation of the landscape plan.

- c. Field Supervision: Site preparation shall be inspected and plant installation shall be field-supervised by a qualified consultant to ensure that plants are healthy, meet specifications and are appropriately placed.
- d. Monitoring: Monitoring shall take place four (4) times over a period of five (5) years, with monitoring performed in years 1, 2, 3, and 5. Monitoring reports should

document plant survival and vigor and include representative photos from permanent locations. **Copies of all monitoring reports shall be submitted to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452.** Reports shall display the Order #3973.

- c. Performance Standards: The project shall meet the following performance standards:
- Survival of plantings after two (2) years: 90%; survival after three (3) years: 85%; survival of plantings after five (5) years: 80%.
 - Invasive non-native species shall have a maximum combined cover of less than 15 percent for all non-native species (including Himalayan and evergreen blackberry, Scots broom, etc.) throughout the monitoring period.
- f. Maintenance: The Applicant is responsible for maintenance and protection of the native vegetation planting area both throughout and after the 5-year monitoring period. All plants that fail to survive for one (1) year after planting shall be replaced before or at the beginning of the next growing season.

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 (425) 649-7129 or (425) 649-7000.
- 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. Timing Requirements

- F1. This Order is valid until all compliance requirements in this document have been met.
- F2. In-water work shall be subject to timing limitations imposed by WDFW. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by WDFW that fisheries resources may be adversely affected.

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 Coast Guard Reference #06-N-01, Order #3973 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

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 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.

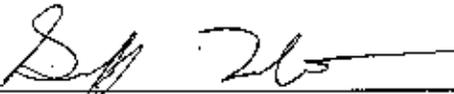
In addition, please send a copy of your appeal to:

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

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 December 22, 2006 at Bellevue, Washington.



Geoff Tallent, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A

**PORT OF SEATTLE
TERMINAL 25/TERMINAL 30 BRIDGE ACROSS SLIP 27 PROJECT
Water Quality Certification Order #3973**

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

I have read and understand the conditions of Order #3973 Section 401 Water Quality Certification for the Port of Seattle's Terminal 25/Terminal 30 Bridge Across Slip 27 Project. I have also read and understand all permits, plans, documents, and approvals associated with the Port of Seattle's Terminal 25/Terminal 30 Bridge Across Slip 27 Project referenced in this order

Signature

Date

Title

Company