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

December 3, 2004

REGISTERED MAIL
RR 359 893 332 US

Graham Anderson
Port of Everett
P.O. Box 538
Everett, WA 98206

Dear Mr. Anderson:

RE: Order # 1813
U.S. Army Corps Reference No. 200400302
Water Quality Certification/Coastal Zone Consistency Determination for Port of Everett, 14th Street bulkhead replacement, Snohomish River Navigation Channel, Snohomish County, Washington.

The request for certification for proposed work in and adjacent to the Snohomish River Navigation Channel has been reviewed. On behalf of the State of Washington, we certify that the proposed work, as conditioned by the enclosed Order, will comply 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 16 U.S.C. 1456 et. seq. (Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended), Ecology concurs with the applicant's determination that this work will be consistent with the approved Washington State Coastal Zone Management Program. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the Coastal Zone Management Program, including Section 401 of the Federal Water Pollution Control Act.

This certification is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Rebekah Padgett at (425) 649-7129. Written comments can be sent to Rebekah at the Department of Ecology, 3190 160th Avenue SE, Bellevue, WA 98008, or at rpad461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Jeannie Summerhays

Jeannie Summerhays
Section Manager
Shorelands and Environmental Assistance Program

Enclosure

JS:RRP:rc
cc: Susan Glenn, U.S. Army Corps of Engineers
Brian Williams, WDFW

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Port of Everett in accordance with 33 U.S.C. 1341 FWPCA § 401, RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	)))))))	**ORDER # 1813** **Corps Reference No. 200400302** 14th Street bulkhead replacement; install 1626 linear feet of sheetpile bulkhead waterward of existing bulkhead; located in Snohomish River Navigation Channel, Port Gardner, Everett, Washington.

TO: Graham Anderson
Port of Everett
P.O. Box 538
Everett, WA 98206

On September 13, 2004, a public notice for a proposed water quality certification from the State of Washington was distributed for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA §401). The proposed project consists of repairing 1,626 lineal feet of a creosote-treated timber bulkhead by placing a full height sheet pile wall in front of the existing bulkhead. The proposal includes: removal of 5,000 square feet of existing floats and gangways from the marina; installation of 23,000 square feet of gangways, piers, floats, and a walkway with 70 percent functional grating incorporated in all gangways; and installation of 120 18-inch-diameter steel piles to secure new gangways, piers, and floats. Piles will be installed with both vibratory and impact hammers with appropriate sound attenuation devices implemented when impact hammers are utilized. Mitigation consists of providing 12,000 square feet of existing functioning tidal marsh, channel, and mudflat habitat in the Port of Everett's Slough Restoration site to compensate for lost shaded marine habitat.

AUTHORITIES:

For purposes of this Order, the term "Applicant" shall mean Port of Everett and its agents and contractors.

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 investigated 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. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 303, 306 and 307);

2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; 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.

CONDITIONS OF ORDER # 1813 AND WATER QUALITY CERTIFICATION:

In view of the foregoing and in accordance with 33 U.S.C. 1341, 90.48.260 RCW and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the following conditions:

A. No Impairment of Water Quality:

A1. The Snohomish River Navigation Channel [WRIA #7] is classified as Class B waters of the state. 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.

A2. WAC 173-201A-110(3) allows a 150-foot mixing zone for temporary exceedances of the turbidity standards during and immediately after necessary in-water construction activities that result in the disturbance of in-place sediments, provided that the Applicant fully apply all known, available, and reasonable methods of prevention, control, and treatment (AKART). This certification does not authorize a mixing zone greater than that allowed by WAC 173-201A-110(3). Within the mixing zone, the Class B standard for turbidity is waived. All other applicable water quality standards shall remain in effect within the mixing zone and all other water quality standards are to be met outside of the authorized mixing zone.

A3. The waiver of specified standards within the mixing zone is intended for brief periods of time (such as a few hours or a day) and is not an authorization to exceed those standards for the entire duration of construction. In no case shall turbidity exceedances cause degradation of water quality that significantly interferes with or becomes injurious to characteristic water uses, including fisheries habitat, or causes long-term harm.

B. Project Mitigation:

B1. Impacts to aquatic resources shall be mitigated through measures described in the following documents, except as modified by this Order:

Appendix C, 14th Street Bulkhead Replacement Conservation Measures and Monitoring Plan, Draft Biological Evaluation dated February 24, 2004 by Pentec, that requires 0.3 acres of the Union Slough Restoration Site to be dedicated as mitigation for this project.

C. Construction:

C1. Construction Stormwater and Erosion Control: Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (*e.g.*, hay bales, detention areas, filter fences, etc.), shall be in place before starting clearing, filling, and grading work at the impact sites, and shall also comply with all requirements of the stormwater construction NPDES Permit if applicable.

C2. 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.

C3. 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.

C4. The Applicant shall provide notice to Ecology's Rebekah Padgett at least 3 days prior to the start of construction, and within 14 days after completion of construction at the project site. Notification can take place by e-mail to rpad461@ecy.wa.gov, telephone to (425) 649-7129, fax to (425) 649-7098, or in writing.

C5. Clean Fill Criteria: The Applicant shall ensure that fill placed for the proposed project does not contain toxic materials in toxic amounts.

D. Emergency/Contingency Measures:

D1. In the event the Applicant is unable to comply with any of the permit terms and conditions due to any cause, the Applicant shall:

- Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.

- Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (425) 649-7000, and within 24 hours to Ecology's Rebekah Padgett at (425) 649-7129.

- Submit a detailed written report to Ecology within five days 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, 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.

D2. 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. No refueling of equipment shall occur over, or within 50 feet of creeks or wetlands.

E. Other Permits and Approvals:

- Mitigated SEPA Determination of Non-Significance and Environmental Checklist, Port of Everett, issued April 14, 2004.
- Hydraulic Project Approval (HPA) Log No.ST-G2503-01

F. General Conditions:

F1. This certification does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

F2. The applicant will be out of compliance with this certification if the project is constructed and/or operated in a manner not consistent with the project description contained in the Public Notice for certification, or as otherwise approved by Ecology. Additional mitigation measures may be required through other local, state, or federal requirements.

F3. The applicant will be out of compliance with this certification and must reapply with an updated application if five years elapse between the date of the issuance of this certification and the beginning of construction and/or discharge for which the federal license or permit is being sought.

F4. The applicant will be out of compliance with this certification and must reapply with an updated application if the information contained in the Public Notice is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency or otherwise, that is not defined in the Public Notice, or has not been approved by Ecology, is not authorized by this Order. All future actions shall be coordinated with Ecology for approval prior to implementation of such action.

F5. 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 foremen, and state and local government inspectors.

To avoid violations or non-compliance with this Order, the applicant shall ensure that project managers, construction superintendents, and other responsible parties have read and understand relevant aspects of this Order, the NPDES permit if applicable, and any subsequent revision or Ecology-approved plans.

F6. 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, or to ensure that conditions of this Order are being met.

F7. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines 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 the public interest.

F8. Liability: 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.

Appeal Process:

Any person aggrieved by Order 1813 may obtain review thereof by appeal. Pursuant to Chapter 43.21B. RCW, a person can appeal this order to the Pollution Control Hearings Board within 30 days of the date of receipt of this Order. Any such appeal must be sent to the Washington Pollution Control Hearings Board, PO Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Shorelands and Environmental Assistance Program, Attn: Loree' Randall, PO Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated December 3, 2004 at Bellevue, Washington.

J Summerhays

Jeannie Summerhays, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington