



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

October 18, 2007

REGISTERED MAIL
RB 670 439 356 US

Ron Thorpe and Jacquelin Sorel Thorpe
4335 Aldrich Road
Bellingham, WA 98226-9638

RE: Water Quality Certification Order #5175 and Coastal Zone Management Consistency Determination for U.S. Army Corps of Engineers (Corps) Reference #200401135 for 0.02 Acre of Wetland Fill at 4555 Northwest Drive, Bellingham, Whatcom County, Washington.

Dear Mr. Thorpe and Mrs. Sorel Thorpe:

On July 9, 2007, the Washington State Department of Ecology (Ecology) received a Joint Aquatic Resources Permit Application (JARPA) from you requesting a Section 401 Water Quality Certification for 0.02 acre of wetland fill associated with access road construction for a proposed industrial park. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on August 28, 2007.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the original JARPA submitted on July 9, 2007, and in the public notice (August 28, 2007) 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 October 12, 2007, Ecology received a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP) form from you for this project. Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with your determination that the proposed work is consistent with Washington's CZMP. This concurrence is based on your compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.



Ron Thorpe and Jacquelin Sorel Thorpe

October 18, 2007

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If you have any questions, please contact Rebekah Padgett, Federal Permit Manager at (425) 649-7129 or rpad461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in black ink, appearing to read 'Geoff Tallent', with a long horizontal flourish extending to the right.

Geoff Tallent
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:csw:cja

Enclosure

cc: Randel Perry, U.S. Army Corps of Engineers

e-cc: Penny Keys – Ecology, HQ
Loree' Randall – Ecology, HQ
Erik Stockdale, Ecology, NWRO

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Ron Thorpe and Jacquelin Sorel Thorpe in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC)))))))	ORDER #5175 Corps Reference No. 200401135 Access road construction will result in 0.02 acre of wetland fill. Construction of an industrial park and associated infrastructure will result in impacts to wetland buffers. Project is located in Bellingham, Whatcom County, Washington.
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TO: Ron Thorpe and Jacquelin Sorel Thorpe
4335 Aldrich Road
Bellingham, WA 98226-9638

On July 9, 2007, Ron Thorpe and Jacquelin Sorel Thorpe submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on August 28, 2007.

The proposed industrial park project includes building an access road through Wetland "H" resulting in 0.02 acre if wetland fill. Proposed access road construction includes excavation of an area that is 26-feet wide by 30-feet long and 1 ½-feet deep. The area would then be backfilled with gravel. Wetland buffer impacts to Wetlands B, C, D, F, G, and H would result from construction associated with the new industrial park, fire flow tanks, fire flow maintenance road, stormwater pond, and septic drainage field. The project is located at 4555 Northwest Drive, Bellingham, Whatcom County, Washington.

Proposed mitigation includes 0.04 acre of wetland creation at a ratio of 2:1 and 0.83 acre of vegetation enhancement to compensate for buffer impacts.

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

1. For purposes of this Order, the term "Applicant" shall mean Ron Thorpe and Jacquelin Sorel Thorpe and their agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to the Washington State Department of Ecology, Northwest Regional Office, Attn: 401/CZM Federal Permit Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order No. 5175 and Corps No. 200401135.
3. Work authorized by this Order is limited to the work described in the JARPA and Wetland Mitigation Report received by Ecology on July 9, 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.
4. 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.
5. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
6. 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.

7. 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.
8. 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.
9. 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.
10. 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.
11. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000.00) per violation for each day of continuing noncompliance.

B. Construction Conditions

1. All work in and near the water or wetlands shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control Best Management Practices (BMP's) suitable to prevent exceedances of state water quality standards shall be in place before starting clearing, filling and grading work and shall be maintained throughout construction.
2. The project shall be clearly marked/staked prior to construction. Clearing limits, travel corridors and stockpile sites shall be clearly marked. Sensitive areas and buffers that are to be protected from disturbance shall be marked so as to be clearly visible to equipment operators. Equipment shall enter and operate within the marked clearing limits corridors and stockpile areas.
3. The Applicant shall obtain and comply with the National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit for this project.

C. Wetland Mitigation and Monitoring

1. Impacts to wetlands shall be mitigated as described in the Wetland Mitigation Report for 4555 Northwest Drive-Phase 2 (Mitigation Report), dated August 2, 2006.

2. Monitoring will be conducted in accordance with the Mitigation Report. Monitoring reports will be prepared and submitted to Ecology's Federal Permit Manager by the end of each monitoring year. The reports will include the following elements:
 - Percent cover of native plants.
 - Percent cover of non-native invasive plants.
 - Photographs from permanent points.
 - Any needed contingency measures.
3. Field Supervision: Grading, weeding, and revegetation shall be field-supervised by a qualified biologist to ensure that the project is constructed according to plans.
4. Monitoring and Access: Ecology staff will arrange with Ron Thorpe and Jacquelin Sorel Thorpe to perform site visits during the five-year monitoring period to evaluate the success of restoration on this site. The first site visit will occur no later than 18 months after submittal of the record drawings.
5. Maintenance: Ron Thorpe and Jacquelin Sorel Thorpe are responsible for management and maintenance of the wetland restoration site.

D. Reporting Requirements

1. Record drawings and monitoring reports shall be submitted to Ecology and include the following:
 - a. Project name and reference numbers (assigned by the Corps, Ecology, Whatcom County);
 - b. Name, address, phone number, and e-mail of the report preparer; and
 - c. Name, address, and phone number, and e-mail of person or organization for whom the report was prepared.
2. Detailed record drawings and a brief report shall be prepared after the Restoration Plan is installed and shall show any variances from the final plan. The record drawings shall be the baseline document used for all future monitoring. It shall include but not be limited to:
 - Name and contact information for the parties responsible for the restoration site, including the applicant, landowner, and wetland professional on site during construction.
 - Date the construction started and ended and when the grading and planting were completed.
 - Final site topography.

- Photographs of the site at the time of record drawings, with photos taken from permanent stations. These should include both panoramic photos and photos taken along transect lines.
- Installed planting scheme with quantities, densities, sizes, and approximate locations.
- Types of habitat features and their locations.
- Summary of any problems encountered and alterations made to restoration plan, including brief statement of reasons for changes.
- Schedule of any follow-up actions needed.
- Copies of any records of long-term protection (e.g., conservation easement, deed notification) for the site.

Two (2) copies of the record drawings and report shall be sent to the Washington State Department of Ecology, Northwest Regional Office, Attn: 401/CZM Federal Permit Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452, within 60 days of completing construction and planting and in no case later than December 31, 2008.

3. Monitoring reports shall be submitted annually for five years and include the following information:
 - Who conducted the monitoring activities (name, address, and phone number).
 - Period covered by the monitoring activities.
 - Photos for the monitoring period taken from permanent stations. These should include both panoramic photos and photos taken along transect lines.
 - Summary of observations and field data.
 - Table of results compared to performance standards for specified target dates.
 - Summary of management actions (maintenance and contingency measures) implemented.
 - Summary of any problems or significant events that may affect the success of restoration.

All monitoring reports shall be submitted to Ecology's 401/CZM Federal Permit Manager, Northwest Regional Office, 3190 160th Avenue SE, Bellevue, WA 98008-5452, within 60 days of completing site monitoring for each monitoring year.

E. Timing Requirements

This Order is valid until all compliance requirements in this document have been met.

F. Notification Requirements

1. The Applicant shall provide written notification (FAX: 425-649-7098, e-mail: rpad461@ecy.wa.gov) or mail to Ecology's 401/CZM Federal Permit Manager, Northwest Regional Office, 3190 160th Avenue SE, Bellevue, WA 98008-5452, in writing at least three (3) days prior to the start of construction at the project site.
2. The Applicant shall provide written notification to Ecology's Northwest Regional Office Federal Permit Manager in writing within fourteen (14) days after completion of construction.

NOTE: These notifications shall include the Applicant's name, project name, project location, the number of this Order, contact and contact's phone number.

G. Emergency/Contingency Measures

1. The Applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials and an emergency call list available on site.
2. 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, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant or operator shall immediately take the following actions:
 - a. Cease operations that are causing the compliance problem.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
 - d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
 - e. Immediately notify Ecology's 24-Hour Spill Response Team at 1-800-258-5990 of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.

3. 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, including wetlands.
4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology's 24-Hour Spill Response Team at 1-800-258-5990.

H. Appeal Process

You have a right to appeal this Order. To appeal this Order 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
P.O. 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:

Rebekah Padgett, Federal Permit Manager 401/CZM
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

*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 October 18, 2007 at Bellevue, Washington.



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