



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

September 15, 2006

REGISTERED MAIL

RB 336 144 778 US

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

Dear Mr. Blomberg:

RE: Water Quality Certification Order #3823 and Coastal Zone Management Consistency Determination for U.S. Army Corps of Engineers (Corps) Reference #200500226 to repair and replace piers and pilings at Terminal 115, Duwamish Waterway, King County, Washington

On July 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 115 rehabilitation project. The project proposes to rehabilitate an existing concrete piling supported cargo pier and construct a new steel barge loading ramp. The U.S. Army Corps of Engineers issued a joint public notice for an individual Section 404 Permit on June 14, 2005 for the proposed project.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the JARPA and the June 14, 2005, 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 June 14, 2005, the Port of Seattle, submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). On November 30, 2005, Ecology and the Port of Seattle jointly requested a CZM extension from the Corps. 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.

Mr. George Blomberg
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This letter also serves as the State response to the Corps of Engineers' June 14, 2005 Public Notice.

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

GT:RRP:cg

Enclosure

cc: Jessie Winkler, U.S. Army Corps of Engineers
Laura Arber, Washington Department of Fish and Wildlife
Erika Hoffman, U.S. Environmental Protection Agency
Penny Keys – HQ
Loree' Randall – HQ
Sandra Lange – NWRO
Brad Helland – NWRO

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF GRANTING A) ORDER # 3823
WATER QUALITY) Corps Reference No. 200500226
CERTIFICATION TO) Terminal 115: Rehabilitation of existing
Port of Seattle) concrete piling supported cargo pier and
in accordance with 33 U.S.C. 1341) construction of new steel barge loading ramp;
(FWPCA § 401), RCW 90.48.120, RCW) Duwamish Waterway, City of Seattle, King
90.48.260 and Chapter 173-201A WAC) County, Washington.

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

On November 23, 2005, the Port of Seattle submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A joint public notice regarding the request 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 June 14, 2005. A revised JARPA describing a reduced project was submitted to the US Army Corps of Engineers on May 19, 2006 but was not submitted to Ecology until July 27, 2006.

The proposed project at the Port of Seattle's existing barge cargo facilities at Terminal 115 includes: (1) repair of sections of an existing concrete piling supported pier; (2) installation of one barge loading ramp; and (3) clean sand may be placed as cap material in locations where creosote piling are extracted. The pier repair includes:

- Removal of approximately 38,100 square feet of existing over-water dock surface,
- Removal of up to 295 concrete piling and up to 40 creosote fender piling,
- Installation of up to 250 24-inch diameter concrete structural piling to support, approximately 34,300 square feet of replacement dock surface,
- Installation of up to 25 new 24-inch diameter steel fender piling, and
- Installation of a new barge loading ramp.

The project is located on the Duwamish Waterway in Section 30, 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 #3823 and Corps Reference # 200500226.

- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on July 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 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 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 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 upstream (representative background), 300 feet downstream, and at the discharge point. A turbidimeter is recommended, however, visual gauging of turbidity is acceptable. Visible project-related turbidity at 300 feet below 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 have more than a twenty (20) percent increase in turbidity when the background turbidity is more than 50 NTU, occurs at 300 feet below the project site, modify the activity causing the problem and continue to monitor every four (4) hours. If exceedances occur with 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. 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. Work shall be accomplished per the *Terminal 115 Barge Cargo Facilities Repair and Replacement Project, Corps Ref No. 200500226, Biological Evaluation and Essential Fish Habitat*, prepared by Grette Associates dated July 1, 2005, except as modified by this Order.

- C3. 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.
- C4. 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.
- 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, 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 activities. Oil absorbent materials shall be employed if 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. During construction the Applicant shall have a boat available on site at all times to retrieve debris from the water.
- C9. 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.
- C10. All manmade debris on the beach within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state.
- C11. 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.

Piling Removal Conditions:

- C12. 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 clamshell bucket or a chain.

- C13. All existing creosote-treated pilings shall be completely extracted, removed from the river, and disposed of at an approved upland disposal site. If the pilings are unable to be completely removed they shall be cut off at a minimum of two (2) feet below grade.
- C14. All concrete piles shall be removed at the level of the existing riprap slope, either broken or cut at the substrate level. Any portion of the piling remaining above the riprap slope shall be cut off and removed. The pilings shall be disposed of at an approved upland disposal site.
- C15. 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.
- C16. 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.

Pile Driving:

- C17. All new pilings shall be steel or concrete.
- C18. Steel pilings shall be installed using a vibratory pile driving device.
- C19. The Applicant shall employ a bubble curtain during installation of steel piles greater than 10 inches in diameter when using an impact hammer. The bubble curtain shall be deployed in a manner to ensure that bubbles completely engulf the piles during the impact driving. A block of wood at least six (6) inches thick shall be placed between the pile driver and the pile to minimize in-water noise.

D. Emergency/Contingency Measures

- D1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- D2. 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.
- D3. 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.

- D4. 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.

E. Timing Requirements

- E1. This Order is valid until all compliance requirements in this document have been met.
- E2. 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.

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 #200500226, Order #3823 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

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 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.

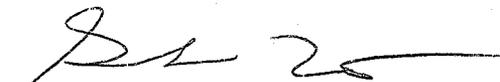
In addition, please send a copy of your appeal to:

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 September 15, 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 115 BARGE LOADING FACILITY IMPROVEMENTS PROJECT
Water Quality Certification Order #3823**

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

I have read and understand the conditions of Order #3823 Section 401 Water Quality Certification for the Port of Seattle's Terminal 115 Barge Loading Facility Improvements Project. I have also read and understand all permits, plans, documents, and approvals associated with the Port of Seattle's Terminal 115 Barge Loading Facility Improvements Project referenced in this order.

Signature

Date

Title

Company