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

July 5, 2007

REGISTERED MAIL
RB 670 438 470 US

Mr. Gary Merlino
9601 50th Avenue SW
Seattle, WA 98136

RE: Water Quality Certification Order #4525 and Coastal Zone Management Consistency Determination for U.S. Army Corps of Engineers (Corps) Reference #200600463 for Repair/Replacement of Damaged Portions of an Existing 430-foot Long Concrete Bulkhead, City of Seattle, Brace Point, East Passage-Puget Sound, King County, Washington.

Dear Mr. Merlino:

On June 13, 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 repair/replacement of damaged portions of an existing bulkhead. 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 June 26, 2007.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the original JARPA submitted on June 13, 2007, and in the public notice (June 26, 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 June 5, 2007, Ecology received a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP) form for this project from you. 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 upon your compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.

If you have any questions, please contact Cynthia Walcker, Federal Permit Coordinator at (425) 649-4318 or cynt461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Erik Stockdale

FOR Geoff Tallent
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:csw:cja

Enclosure

cc: Amy Klein, Project Manager, U.S. Army Corps of Engineers
Jeffrey A. Layton
Laura Arber, Area Habitat Biologist

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

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO **Gary Way** in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	)))))))	**ORDER #4525** **Corps Reference No. 200600463** Repair/replace damaged portions of an existing 430-foot long concrete bulkhead, City of Seattle, Brace Point, East Passage-Puget Sound, King County, Washington.

TO: Mr. Gary Merlino
9601 50th Avenue SW
Seattle, WA 98136

On June 13, 2007, Mr. Gary Merlino 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 June 26, 2007.

The proposed project entails repair/replacement of damaged portions of an existing 430-foot long concrete bulkhead with a combination of pre-cast and cast-in-place concrete structures. To prevent future wave action from undermining the replaced/repaired structures, steel sheet piles will be driven to a depth of 12 feet below the surface along the length of the bulkhead using a vibratory hammer. Additionally, the replacement of the bulkhead at the north end of the work area will be raised two feet in height over existing conditions. Furthermore, the project includes repair/replacement of a damaged boat ramp and two undermined stairways. The project abuts four residences owned by Mr. Merlino including: 9601 – 50th Avenue SW, 9345 Fauntleroy Way SW, 5040 SW 97th Street, 5042 SW 97th Street, located in Seattle, King County, Washington 98136. Sections 2, 3, 34, and 35, Townships 23 North and 24 North, Range 03 East, WRIA #9, Green Duwamish Watershed.

Mitigation for this project includes planting native trees, shrubs, and ground cover immediately shoreward of the bulkhead. Mitigation monitoring will then be conducted for a period of five years. During this period of time exotic invasive species will be removed from the project area

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 Gary Merlino, and his 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 Coordinator, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order No. 4525 and Corps No. 200600463.

3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on June 13, 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. Water Quality

1. This Order does not authorize temporary exceedances of the turbidity standard beyond the limits established in WAC 173-201A-210(1)(e)(i)(D).

C. Construction Conditions

1. All work in and near the water 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.

D. Timing Requirements

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

E. Notification Requirements

1. The Applicant shall provide written notification (FAX: 425-649-7098, e-mail: cynt461@ecy.wa.gov) or mail to Ecology's 401/CZM Federal Permit Coordinator, 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 Coordinator 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.

F. 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.

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 JULY 5, 2007 at Bellevue, Washington.

Eric Stockdale

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