



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

October 31, 2006

REGISTERED MAIL
RB 670 438 007 US

Snohomish County Airport
Attn: Andrew Rardin
3220 100th Street SW, Suite A
Everett, WA 98204

**RE: Water Quality Certification Order #3845 for U.S. Army Corps of Engineers (Corps)
Reference #200600522, Fill Approximately 0.33 Acre of Wetlands, Near Mukilteo,
Snohomish County, Washington**

Dear Mr. Rardin:

On May 1, 2006, the Snohomish County Airport, submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. The U.S. Army Corps of Engineers (Corps) issued a Nationwide Permit (NWP) #38, Cleanup of Hazardous and Toxic Waste, for the project on June 28, 2006. During review of the project and the NWP, Ecology determined that an individual Section 401 Water Quality Certification would be required. Ecology issued a public notice pursuant to Chapter 173-225 WAC on July 28, 2006.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the 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.

This Water Quality Certification is being issued after the fact, as restoration work within the wetland at the Paine Field Pistol Range Cleanup site has nearly been completed. It is Ecology's understanding that the filling of approximately 0.33 acre of wetland for this project was completed in September 2006. This work was completed without Ecology's Section 401 Water Quality Certification, which is in violation of the Clean Water Act (33 U.S.C. 1341) and state law. Ecology has proceeded with the issuance of a Water Quality Certification with knowledge of this violation. At this time, Ecology has chosen not to pursue a formal enforcement action in anticipation that the Snohomish County Airport will comply with all of the conditions within the enclosed Order. On future projects, should Snohomish County staff proceed with filling wetlands without first obtaining applicable permits, Ecology will use our discretionary authority to pursue all available enforcement actions necessary to protect waters of the state.



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On July 24, 2006, the Snohomish County Airport, 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 Snohomish County Airport's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon Snohomish County Airport'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. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Geoff Tallent
Section Manager
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:rrp:cja

Enclosure

cc: Susan Glenn, U.S. Army Corps of Engineers
Stephanie Cotton, Snohomish County Public Works
Penny Keys – HQ
Loree' Randall – HQ
Paul Anderson, Ecology

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF GRANTING A) ORDER #3845
WATER QUALITY) Corps Reference No. #200600522
CERTIFICATION TO) Fill Approximately 0.33 Acre of Wetlands, Near
Snohomish County Airport) Mukilteo, Snohomish County, Washington.
in accordance with 33 U.S.C. 1341)
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: Snohomish County Airport
Attn: Andrew Rardin
3220 100th Street SW, Suite A
Everett, WA 98204

On May 1, 2006, Snohomish County Airport submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. The U.S. Army Corps of Engineers (Corps) issued a Nationwide Permit (NWP) #38, Cleanup of Hazardous and Toxic Waste, for the project on June 28, 2006. During review of the project and the NWP, Ecology determined that an individual Section 401 Water Quality Certification would be required. Ecology issued a public notice pursuant to Chapter 173-225 WAC on July 28, 2006.

The proposed project entails filling approximately 0.33 acre of wetlands in order to clean up lead-contaminated soils at a former pistol range. Contaminated wetland soils, approximately 6 inches deep, will be removed (scraped) and stabilized with concrete on site prior to disposal at an approved landfill. Where contaminated wetland soils are removed, they will be replaced with appropriate clean soils. These impacts will be compensated for on site by restoring the approximately 0.33 acre of slope wetland temporarily disturbed during the site remediation. The project site is located at the Snohomish County Airport, 8401 Paine Field Boulevard, in Mukilteo, Snohomish County, Washington; in the SW quarter of Section 15, Township 28 North, Range 4 East; and in the Big Gulch Creek drainage of Water Resource Inventory Area 8.

This Water Quality Certification is being issued after the fact, as restoration work within the wetland at the Paine Field Pistol Range Cleanup site has nearly been completed. It is Ecology's understanding that the filling of approximately 0.33 acre of wetland for this project was completed in September 2006. This work was completed without Ecology's Section 401 Water Quality Certification, which is in violation of the Clean Water Act (33 U.S.C. 1341) and state law. Ecology has proceeded with the issuance of a Water Quality Certification with knowledge of this violation. At this time, Ecology has chosen not to pursue a formal enforcement action in anticipation that the Snohomish County Airport will comply with all of the conditions within the enclosed Order. On future projects, should Snohomish County staff proceed with filling wetlands without first obtaining applicable permits, Ecology will use our discretionary authority to pursue all available enforcement actions necessary to protect waters of the state.

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 Snohomish County Airport, and their 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 #3845 and Corps Reference #200600522.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on May 1, 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 does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
- A6. 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.
- A7. 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.
- A8. 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.
- A9. 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.
- A10. 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

- B1. 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.

C. Project Mitigation for Wetlands:

C1. The filling of approximately 0.33 acre of wetland (identified by the Applicant as Wetland 11) in order to clean up lead-contaminated wetland soils shall be mitigated through on-site restoration of temporarily disturbed areas of Wetland 11, a slope wetland, and enhancement of the wetland buffer. A maximum of 34,082 square feet of wetland and wetland buffer are proposed for enhancement. These measures are described in the following document, except as modified by this Certification and Order, and including any approved revisions:

a. *Wetland Report, Snohomish County Airport Sherriff's Pistol Range Clean Up, Snohomish County, WA, April 2006, prepared by Mark Stamey, Senior Environmental Planner, Snohomish County Public Works.*

C2. In addition to mitigation measures described in the above-referenced documents, the following requirements shall be conditions for all mitigation sites:

a. Timing: The wetland mitigation plan shall be implemented immediately following excavation of lead-contaminated soils. Replanting of native woody vegetation will occur during the first appropriate planting time following site remediation. In no case should this be more than six (6) months after authorized wetland impacts occur.

b. Record Report and Drawings: A report documenting the final restoration plantings areas shall be prepared when site construction and planting is completed. The report shall include the following:

- Vicinity map showing site access;
- Drawings that clearly identify the boundaries of the mitigation areas;
- The installed planting scheme showing representative densities, sizes, and locations of plants, as well as plant sources and the time of planting;
- Photographs of the area taken from permanent reference points;
- Locations of photo-points, sampling and monitoring sites; and
- An analysis of any changes to the mitigation plan that occurred during construction.

Two copies of the Record Report shall be sent to Ecology's 401/CZM Federal Project Manager within 60 days of completing the wetland restoration, and in no case later than January 31, 2007, unless approval is obtained in advance from Ecology. The project monitoring period shall commence with Ecology's acceptance of the Record Report.

c. Field Supervision: The wetland mitigation implementation shall be field-supervised by a qualified wetland ecologist to ensure that plants are appropriately placed.

- d. **Performance Standards:** The performance standards for the wetland mitigation shall be as listed in the *Wetland Report, Snohomish County Airport Sheriff's Pistol Range Clean Up, Snohomish County, WA* (hereafter referred to as the "Mitigation Plan"). The performance standards specify how the goals and objectives of the Mitigation Plan are to be measured. The Mitigation Plan details three (3) management objectives, which include performance standards for wetland restoration and buffer enhancement areas.
- e. **Monitoring:** Monitoring to ensure that the project performance standards are met shall be performed as described in the Mitigation Plan. In addition, annual mitigation monitoring shall take place over a period of five (5) years. **Two copies of all monitoring reports shall be submitted to Ecology's 401/CZM Federal Project Manager at 3190 – 160th Avenue SE, Bellevue, WA, 98008-5452.**
- f. **Maintenance:** Maintenance of the wetland mitigation sites is necessary to ensure that the required performance standards are met. Maintenance shall be performed as described in the Mitigation Plan.
- g. **Contingency Measures:** The Applicant is responsible for the success of the mitigation measures. Contingency measures described in Table 2 of the Mitigation Plan shall be implemented as soon as monitoring shows that one or more performance standards have not been met.
- h. **Year 5 Delineation:** The mitigated wetland shall be delineated using the 1997 Washington State Wetlands Identification and Delineation Manual (or as updated) at the end of the 5-year monitoring period to determine the actual area of wetlands created.
- i. **Year 5 Rating:** The 2004 Washington State Wetlands Rating System shall be applied to the mitigation area at the end of the 5-year monitoring period to determine the classification and rating of the created wetlands.

D. Emergency/Contingency Measures

- D1. The Applicant shall develop a spill prevention and containment plan for all aspects of this project.
- D2. The facility 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.
 - 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.
- D5. 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.
- D6. 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. Timing Requirements

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

F. Notification Requirements

- F1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager within 14 days after completion of construction at the project site. Notification, referencing Corps Reference #200600522, Order #3845 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 October 31, 2006 at Bellevue, Washington.



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