



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
TTY 711 or 800-833-6388 (for the speech or hearing impaired)

REGISTERED MAIL

November 17, 2006

Ms. Ann Kenny
Port of Seattle
P.O. Box 1209
Seattle, WA 98111

RE: Water Quality Certification - Order #3940 / Corps Public Notice #200600722 - Dredge up to 645 CY of silty sand from the toe of the existing bulkhead by a long-reach excavator, barge-mounted clamshell, or diver-assisted suction dredge in Shilshole Bay Marina in Shilshole Bay at Seattle, King County Washington.

Dear Ms. Kenny:

The above-referenced public notice for proposed work in waters of the state has been reviewed in accordance with all pertinent rules and regulations. On behalf of the State of Washington, we certify that the work proposed in the public notice complies 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 Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the Applicant's determination that this work is consistent with the approved Washington State Coastal Zone Management Program.

This certification is subject to the conditions contained in the enclosed Order and may be appealed by following the procedures described in the Order. If you have any questions concerning the content of the Order, please contact Helen Pressley at (360) 407-6076.

Sincerely,

A handwritten signature in black ink, appearing to read "Brenden McFarland".

Brenden McFarland, Section Manager
Environmental Review and Transportation
Shorelands and Environmental Assistance Program

cc: Seattle Corps – Jessica Winkler
David McRaney – Port of Seattle
Rebekah Padgett – Ecology NWRO
Penny Keys – Ecology HQ



IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Port of Seattle in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC) ORDER # 3940) Corps Reference No. 200600722) Dredge up to 645 CY of silty sand from the toe) of the existing bulkhead to reach a bottom) elevation of -8 feet MLLW in the Shilshole Bay) Marina in Seattle, King County, Washington.)))
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TO: Ms. Ann Kenny
Port of Seattle
P.O. Box 1209
Seattle WA 98111

On July 25, 2006 the Port of Seattle submitted a Joint Aquatic Resource 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 the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on August 26, 2006

The purpose of this project is to prevent damage to new docks caused by grounding in shallow water.

This project includes dredging of up to 645 cubic yards (CY) of silty sand from the toe of the existing bulkhead to reach a bottom elevation of -8 Mean Lower Low Water (MLLW) with a 1 foot overdredge.

Following the dredging, a sample of the newly exposed surface layer will be collected and analyzed for compliance with the Washington State antidegradation policy. If sediment quality in the newly exposed surface exceeds the Washington State Sediment Management Standards, up to 285 CY of additional material may be dredged and backfilled with clean sand. All dredged material shall be disposed of at an approved upland facility. After dredging, a one-foot layer of 3 to 6 inch angular quarry spall totaling up to 221 CY will be placed along the toe of the slope to prevent further sloughing and to stabilize the slope.

The proposed dredge material could not be tested prior to dredging due to a high percentage of compact sand and rock within the dredge prism. It was determined that this sediment was not suitable for open-water disposal.

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, and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

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 the Port of Seattle, and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Headquarters to the Federal Permit Coordinator, PO Box 47600, Olympia WA 98504. Any submittals shall reference Order No. 3940 and Corps No. 200600722.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on July 25, 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.
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 shall be rescinded if the Army Corps of Engineers does not issue an individual 404 water quality permit.
6. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

7. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the project manager, construction managers and lead workers, and state and local government inspectors.
8. The Applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
9. 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, erosion, etc.), or if additional conditions are necessary to further protect water quality.
10. 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.
11. 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.
12. 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. No Further Impairment of Existing Water Quality.
Shilshole Bay, (WRIA 8, WA-PS-0230) is a Class AA water of the state. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (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.
2. 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 Port of Seattle from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.
3. Shilshole Bay has been identified on the current 303(d) list of impaired water bodies as exceeding water quality standards for fecal coliform bacteria. This proposed project shall not result in a further exceedance of this standard, and will be out of compliance with this

certification if discharges from the project exceed limits for those contaminants identified in 173-201A-030(1) WAC and/or 173-201A-040 WAC.

C. Construction:

1. Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (e.g. filter fences, silt curtains, etc.), shall be in place before starting work at the impact site. BMPs shall be maintained throughout construction.

D. Dredging and Disposal:

1. All dredging is to be done using a barge-mounted or land-based floating long reach excavator, a barge-mounted clamshell, or a diver-assisted suction dredge. Use of any other type of dredge will require prior approval from the DMMP agencies.
2. All material dredged will be transported to an approved upland disposal area.
3. All debris (larger than 2 feet in any dimension) shall be removed from the dredged sediment prior to disposal. Similar sized debris found floating in the dredging or disposal area shall also be removed.

E. Testing Sediment:

1. All Z-layer testing shall be completed as described in the letter issued by David Kendall of the Army Corps of Engineers and dated May 12, 2006. Should testing indicate that any of this sediment is contaminated, either this material will be removed and disposed of upland in an approved location or it will be left in place and capped.

F. Monitoring:

1. During and immediately after project completion, the Applicant or contractor shall visually monitor the area for distressed or dying fish. If distressed or dying fish are observed, in-water work shall cease immediately and the Applicant or the contractor shall contact Ecology at Ecology's Northwest Regional Spill Response Office at (425) 649-7000, a 24-hour number.
 - a. An exceedance of the water quality standards could result in corrective action depending upon the degree of the exceedance and/or the risk posed by the exceedance to beneficial uses of the water body.

G. Emergency and Contingency Measures:

1. Any in-water work that is out of compliance with the provisions of this Order, 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 operator shall immediately take the following actions:
 - a. Cease operations.
 - 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 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.
2. Spills into state waters, spills onto land with a potential for entry into state waters, or other significant water quality impacts, shall be reported immediately to Ecology's Northwest Regional Spill Response Office at (425) 649-7000, a 24-hour number.
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.

H. Timing Requirements:

1. In-water work is subject to a fishery closure window described in Washington State Department of Fish and Wildlife's (WDFW) Hydraulic Project Approval (HPA) #106337-1 dated August 23, 2006. All in-water work shall be completed by the work window identified in the most current HPA issued for this project. Any project change that requires a new or revised HPA should also be sent to Ecology for review.
2. This Order shall remain in effect for a period of five years from date of issuance. Continuing this project beyond the five year term of this Order will require separate certifications every five years.

I. Notification Requirements:

1. **The department shall be notified at least 72 hours prior to the start of dredging.** Contact Helen Pressley at Department of Ecology, PO Box 47600, Olympia WA 98504-7600, (360) 407-6076, or hpre461@ecy.wa.gov.

J. 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 Nov 17, 2006 at Lacey, Washington.



Brenden McFarland, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

Attachment #A

**Water Quality Certification
Statement of Understanding**

I, _____, state that, as an agent or contractor for construction and/or dredging at the Port of Seattle, 7001 Seaview Ave NW, Seattle WA 98107, King County Washington. I have read and understand the relevant conditions of Washington State Department of Ecology Water Quality Certification Order #3940 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

Company

Please have each individual sign a separate copy.