



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

P.O. Box 47600 • Olympia, Washington 98504-7600
(360) 407-6000 • TDD Only (Hearing Impaired) (360) 407-6006

August 6, 2007

REGISTERED MAIL

Mr. Graham Anderson
Port of Everett
P.O. Box 538
Everett WA 98206

Dear Mr. Anderson:

RE: Order #4153/Corps Project #NWS-2006-1403-NO – For maintenance dredging of approximately 4,000 cubic yards (cy), replacement of marginal walkways and open slips for Docks I – O South, replacement of Docks P and Q in Port Gardner Bay at Everett, Snohomish County, Washington

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 certification is subject to the conditions contained in the enclosed Order and may be appealed by following the procedures described in the Order.

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.

If you have any questions concerning the content of this letter, please contact Helen Pressley at (360) 407-6076.

Sincerely,

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

cc: Susan Glenn, Corps
Penny Keys, Ecology

IN THE MATTER OF GRANTING A) ORDER # 4253
WATER QUALITY) Corps Reference No. NWS-2006-1403-NO
CERTIFICATION TO) Maintenance dredging of approximately 4,000
Port of Everett) cy, replacement of marginal walkways and open
in accordance with 33 U.S.C. 1341) slips for Docks I – O South, and replacement of
(FWPCA § 401), RCW 90.48.120, RCW) Docks P and Q in Port Gardner Bay at Everett,
90.48.260 and Chapter 173-201A WAC) Snohomish County, Washington

TO: Mr. Graham Anderson
Port of Everett
P.O. Box 538
Everett WA 98206

On March 2, 2007 the Port of Everett 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 Ecology for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on May 18, 2007.

The proposed project includes replacement of the marginal walkways and open slips for Docks I through O South, the replacement of existing South Marina Docks P and Q and their associated floats and piling, and maintenance dredging of approximately 4,000 cubic yards (cy) at the base of Docks P and Q and along the marginal walkways west to Dock I to eliminate grounding of floats and boats during low tides.

The purpose of this project is to maintain service and safety for marina tenants and to maintain proper depths for moorage.

The dredged material will be disposed of at the Puget Sound Dredge Disposal Analysis (PSDDA) Port Gardner site.

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 the Port of Everett 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 Office, Attn: 401/CZM Federal Project Manager, P.O. Box 47600 Olympia, WA 98504-7600. Any submittals shall reference Order #4253 and Corps Reference # NWS-2006-1403-NO.
3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resource Protection Application (JARPA) received by Ecology on March 2, 2007. The Applicant will be out of compliance with this Order and must submit an updated JARPA 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 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. 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.
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) per violation for each day of continuing noncompliance.

B. Water Quality Conditions:

1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-210(1)(e)(i)(D). 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.
2. 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.

C. Dredging and Disposal:

1. All dredging is to be done using a clamshell bucket dredge. Use of any other type of dredge will require prior approval from the DMMP agencies.
2. All dredged material will be transported to the Port Gardner non-dispersive open-water disposal site.
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.
4. Dredging operations shall be conducted in a manner that minimizes the disturbance or siltation of adjacent waters and prevents the accidental discharge of petroleum products, chemicals or other toxic or deleterious substances into waters of the State.

5. Dredged material shall not be stockpiled on a temporary or permanent basis below the ordinary high water line.
6. Only barges with low walls or other containment devices around the perimeter of the barge shall be used for storage of dewatering discharges and excavated sediments in order to prevent and minimize sediments and turbid waters from entering marine water.
7. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.
8. A **Dredging Plan** is required and shall be made available for review and approval at the pre-dredge meeting to be convened at the Seattle Corps of Engineers office prior to the start of dredging. One week prior to the pre-construction meeting, a copy of the plan shall be sent to the Federal Permit Coordinator, Department of Ecology, P. O. Box 47600, Olympia WA 98504-7600 for review prior to the meeting.

D. Timing Requirements:

1. 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 (5) years from date of issuance. Continuing this project beyond the ten year term of this Order will require separate certifications every five years.

F. Notification Requirements:

1. The 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 or dredging at the project site. Notification, referencing Corps Reference #NWS-2006-1403-NO, Order #4253 can take place by telephone to (360) 407-6076 or, fax to (360) 407-6902, e-mail at hpre461@ecy.wa.gov or in writing.

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. Conditions for In-Water and Over-Water Construction Activities:

1. Construction stormwater, sediment, and erosion control best management practices (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.
2. Sediment control measures shall be inspected regularly and maintained prior to and during project implementation.

3. 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.
4. The Applicant shall use tarps or other containment methods when cutting or drilling over water to prevent sawdust, rubble, and other materials from entering the water.
5. Project activities shall be conducted to minimize siltation and disturbance of the beach area and bed.
6. During dock and float replacement, in-water construction, and piling removal and installation, 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 these activities. Oil absorbent materials shall be employed if any 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.
7. In-water construction staging area BMPs (*e.g.*, silt curtains, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting work at the site.

Piling Removal Conditions:

8. All piling shall be removed by vibratory extraction or a clamshell crane. In the event piling break off during extraction, the remaining piling may be removed by using a clamshell bucket, chain, or similar means, or cut off 2 feet below the mudline.
9. The work surface on the barge deck or uplands shall include a containment basin for piles and any liquid or 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 and liquid. Water left in the basins shall not be dumped into waters of the state unless treated.
10. Piles removed from substrate shall be moved immediately from the water into the barge or onto uplands. 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. All excavated piles shall be disposed of at an approved upland disposal site.

Pile Driving:

11. The Applicant shall employ a bubble curtain during installation of steel piles greater than 10 inches in diameter or 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. If any fish are seen to be in distress, work shall immediately cease and a bubble curtain shall be deployed before the driving is completed.

H. 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, 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, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (360) 407-6076.
 - f. 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.
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 using the above phone numbers.

G. Appeal Process:

You have a right to appeal this Order. To appeal this 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
PO 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:

Helen Pressley
Department of Ecology
Headquarters Office
PO Box 47600
Olympia, WA 98504-7600

*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 Aug 6, 2007 at Lacey, Washington.



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

ATTACHMENT A

**Port of Everett
South Marina Dredging and Reconstruction
Water Quality Certification Order #4253**

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

I have read and understand the conditions of Order #4253 Section 401 Water Quality Certification for the Port of Everett South Marina Dredging and Reconstruction. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this order.

Signature

Date

Title

