



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

June 22, 2007

**REGISTERED MAIL**  
**RB 670 438 789 US**

Port of Seattle  
Attn: Jason Jordan  
Seaport Environmental Programs  
PO Box 1209  
Seattle, WA 98111

Dear Mr. Jordan:

RE: Water Quality Certification Order #4440 and Coastal Zone Management Consistency Determination for U.S. Army Corps of Engineers Reference #200700195, Terminal 91 Berth M Repair Project, Elliott Bay, King County, Washington

On February 6, 2007, 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 91 Berth M Repair project. The Corps issued a joint public notice for a Section 404 and Section 10 Permit on April 18, 2007, for the proposed project.

The Terminal 91 Berth M project involves reconstructing 215 linear feet of pier apron at Pier 91. The project includes removal of approximately 460 creosote-treated piles.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the February 6, 2007, JARPA and the April 18, 2007, 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.

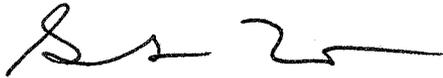
On May 14, 2007, the Port of Seattle submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the Port of Seattle's determination that the proposed 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.



Port of Seattle  
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If you have any questions, please contact Rebekah Padgett at (425) 649-7129 or email at rpad461@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:cja

Enclosure

cc: Jessica Winkler, U.S. Army Corps of Engineers  
David McCraney, Port of Seattle  
Laura Arber, Washington Department of Fish and Wildlife

e-cc: Penny Keys – HQ  
Loree' Randall – HQ

**IN THE MATTER OF GRANTING A ) ORDER #4440**  
**WATER QUALITY ) Corps Reference No. 200700195**  
**CERTIFICATION TO ) Terminal 91 Berth M Repair; Elliott Bay, Seattle,**  
**Port of Seattle ) King 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: Port of Seattle  
Attn: Jason Jordan  
Seaport Environmental Programs  
PO Box 1209  
Seattle, WA 98111

On February 6, 2007, 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. 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 of Chapter 173-225 WAC on April 18, 2007.

The proposed reconstruction of 215 feet of Pier 91 includes:

- Replace the existing 77-foot-wide timber apron consisting of 460 existing creosote treated timber piles (approximately 135 piles will be completely extracted and approximately 325 piles will be cut off at the mudline and left in place for seismic slope stability). The apron will be replaced with an 86-foot-wide concrete apron, consisting of 35 new 24-inch concrete piles, 42 up to 24-inch steel piles (12 of which will be filled with a total of up to 165 cubic yards of concrete), and 13 14-inch diameter ACZA-treated fender piles.
- Placement of a new concrete and sheet pile bulkhead landward of the existing bulkhead.
- Placement of up to 700 cubic yards of rip rap and 290 cubic yards of 2- to 3-inch and 3/8-inch gravel at the toe of the new bulkhead.
- Placement of 1,200 cubic yards of sand/rock mix over the entire apron footprint, creating a 1-foot-thick cap.
- Replacement of one stormwater catch basin and the existing stormwater outfall at the north end of the berth.
- Installation of a new light pole on the uplands.

The project is located at 2201 West Garfield Street, Seattle, Washington, in Section 23, T. 25 N., R. 3 E., WRIA 8.

**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 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 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #4440 and Corps Reference #200700195.

- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on February 6, 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.
- 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 U.S. Army Corps of Engineers does not issue an individual Section 404 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. This Order does not authorize a temporary turbidity exceedance beyond the limits established in WAC 173-201A-210(1)(e)(i) for Elliott Bay. 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 sampled and monitored per the following documents, except as modified by conditions of this Order:
- Letter to Rebekah Padgett, Ecology, from Jason Jordan, Port of Seattle, RE: JARPA Application Comments for Terminal 91, Pier 91, Berth M Repair, Project Reference #NWS-2007-195-SOW, dated 4/5/07.
  - E-mail to Rebekah Padgett, Ecology, from Jason Jordan, Port of Seattle, RE: T91 Berth M Water Quality Monitoring, dated 4/27/07.
  - E-mail to Rebekah Padgett, Ecology, from Jason Jordan, Port of Seattle, RE: T91 Berth M/Water Quality Monitoring, dated 5/11/07.

Water quality standards for turbidity in “Excellent Quality” waters are as follows: turbidity shall not exceed 5 NTU over background conditions when the background is 50 NTU or less, or a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. If exceedances of this standard at the point of compliance specified in WAC 173-201A-210(1)(e)(i) are detected through water quality sampling and monitoring, the Applicant shall immediately take action to stop, contain, and prevent unauthorized discharges or otherwise stop the violation and correct the problem.

Turbidity at 150 feet of the discharge point is considered to be an exceedance of the standard. If an exceedance occurs, the Applicant shall follow the protocols and notification procedures in Condition B3.

- B3. Notification of exceedances: Notification of exceedances that are detected through water quality sampling shall be made to Ecology within 24 hours of occurrence. Notification shall be made with reference to Order #4440, Attn: 401/CZM Federal Project Manager, by telephone at (425) 649-7129 or (425) 649-7000, or by fax to (425) 649-7098. The Applicant shall, at a minimum, provide Ecology with the following information:

- i. A description of the nature and cause of non-compliance, including the quantity and quality of any unauthorized discharges;
  - ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance; and
  - iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
  - iv. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, photographs, and any other pertinent information.
- B4. Reporting: If no exceedances are detected, results of water quality sampling, as determined by the Water Quality Protection Plan, shall be forwarded to Ecology on a monthly basis in accordance to Condition A2.

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

**General Conditions:**

- C1. 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.
- C2. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- C3. Work shall be accomplished per Sheets 1-6, Terminal 91—Berth M Rebuild Apron at Pier 91 West, dated January 15, 2007, and the best management practices described on pages 13-14 of the Biological Evaluation, prepared by Grette Associates LLC, dated January 2007, received by Ecology on February 28, 2007, except as modified by this Order.
- C4. 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.
- C5. 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.

- C6. 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.

**Work in Marine Waters:**

- C7. 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. All accumulated debris shall be collected and disposed of upland at an approved disposal site.
- C8. 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.
- C9. During construction, the Applicant shall have a boat available on site at all times to retrieve debris from the water.
- C10. All manmade debris that has been deposited below the Ordinary High Water Line within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Concrete blocks, metal debris, cables, submerged timbers and other debris in the construction work corridor that have washed into marine areas shall be removed from the project area.
- 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.
- C12. A silt curtain shall be deployed and maintained in a functional manner to contain suspended sediments at the work site during in-water work, including removal and driving of piling.
- C13. Project activities shall be conducted to minimize siltation of the beach area and bed.
- C14. The Applicant shall operate the barge(s) and tug in deep water so as to minimize nearshore propeller wash impacts such as suspension of nearshore sediments.

**Piling Removal Conditions:**

- C15. Approximately 460 existing creosote-treated pilings shall be removed from marine waters, either completely extracted (approximately 135) or cut off at the mudline and left in place for seismic stability (approximately 325).

The approximately 135 piling that will be completely extracted shall be removed by vibratory extraction. In the event these pilings break off during extraction, the remaining piling may be removed by using a chain, clamshell bucket, or air-powered chainsaw or shears.

The approximately 325 piling that will be cut off at the mudline and left in place shall be severed at the substrate surface using a hydraulically or air-powered chainsaw, mechanical shears, or a clamshell bucket.

- C16. Piles removed from substrate: the pile 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.
- C17. Work surface on the barge deck or on uplands 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.
- C18. The piles shall be disposed of at an approved upland disposal site.

**Pile Driving:**

- C19. The new pilings shall include approximately 35 concrete pilings, 42 steel pilings (12 of which will be filled with a total of up to 165 cubic yards of concrete), and 13 ACZA-treated piles.
- C20. The pilings shall be installed using an impact hammer pile driver, vibratory hammer, or augercast in place.
- C21. A block of wood at least six (6) inches thick shall be placed between the impact pile driver and the pile, or a bubble curtain shall be employed, to minimize in-water noise during installation of steel piles 10 inches in diameter or less. 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. 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.
- C22. The Applicant shall contain augering operations, including drilling mud if used, within a watertight seal casing that extends from just below the mudline to above the water level.
- C23. Augercast spoils will be contained, collected, tested, removed from the site, and disposed of at an appropriate upland disposal site.

**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 #200700195, Order #4440 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

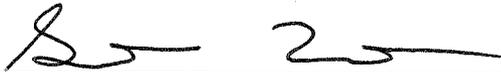
P.O. Box 47600

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 June 22, 2007 at Bellevue, Washington.



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

**ATTACHMENT A**

**PORT OF SEATTLE  
TERMINAL 91 BERTH M REPAIR PROJECT  
Water Quality Certification Order #4440**

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

I have read and understand the conditions of Order #4440 Section 401 Water Quality Certification for the Port of Seattle Terminal 91 Berth M Repair Project. I have also read and understand all permits, plans, documents, and approvals associated with the Port of Seattle Terminal 91 Berth M Repair Project referenced in this order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company