



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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November 7, 2007

REGISTERED MAIL
RB 252 946 585 US

Ben Brown
Department of Transportation
Northwest Region
P.O. Box 330310
Seattle, WA 98133-9710

RE: Water Quality Certification Order #5155 for Corps Public Notice No. 200700470 for the SR 539 Tenmile to Badger transportation project in Whatcom County, Washington.

Dear Mr. Brown:

On April 19, 2007, the Department of Ecology (Ecology) received the Department of Transportation's (WSDOT) Joint Aquatic Resources Permit Application (JARPA) for a 401 Water Quality Certification (401 Certification) for the proposed SR 539 Tenmile to Badger transportation project. The project proposes to widen SR 539 from two lanes to four lanes starting at Tenmile Road and ending at Badger Road. The U.S. Army Corps of Engineers issued a public notice for the project on June 25, 2007.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

On October 4, 2007, Ecology received WSDOT's Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). Under Section 307(c)(3) of the federal Coastal Zone Management Act, Ecology concurs with WSDOT's determination that this work is consistent with Washington's CZMP. This concurrence is based on the applicant's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the federal Water Pollution Control Act.



If you have any questions, please contact Penny Kelley, Federal Project Coordinator, at 360-407-7298 or at pkel461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



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

Enclosure

cc: Rebecca McAndrews, Corps of Engineers
Katie Chamberlain, Department of Ecology
Caroline Corcoran, Department of Ecology
Bobb Nolan, Department of Ecology
Barry Wenger, Department of Ecology
Jim Fraser, Department of Fish & Wildlife
Don Ponders, Department of Fish & Wildlife
Kevin Stuber, Department of Transportation
Terry Drochak, Department of Transportation

e-cc: Penny Keys, HQ
Loree' Randall, HQ
Mak Kaufman, Water Quality Northwest Region

IN THE MATTER OF GRANTING A) ORDER # 5155
WATER QUALITY) Corps Reference No. 200700470
CERTIFICATION TO) The project entails widening SR 539 from two
Washington State Department of) lanes to four lanes starting at Ten Mile Road and
Transportation) ending at Badger Road. The project is located in
in accordance with 33 U.S.C. 1341) Whatcom County, Washington.
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)
)

TO: Ben Brown
Department of Transportation
Northwest Region
P.O. Box 330310
Seattle, WA 98133-9710

On April 19, 2007, Washington State Department of Transportation (WSDOT) 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 public notice for this project on June 25, 2007.

The proposed project entails widening 6.76 miles of State Route (SR) 539 between Ten Mile Road and Badger Road (SR 546) from two lanes to four lanes. The project involves widening the existing Nooksack South Overflow and Nooksack North Overflow bridges, replacing the existing Fishtrap Creek bridge with a larger bridge, replacing the Duffner Creek culverts with a bottomless box culvert, and adding four new bridges on Wisner Lake, Nooksack River, Nooksack South Overflow, and Nooksack North Overflow. New stormwater conveyance and treatment facilities will also be constructed as part of the project.

The project will result in 1.57 acres of permanent impacts to wetlands, deriving primarily from cut and fill requirements. The wetland impacts will be mitigated on the Potter Road mitigation site through a combination of wetland creation (1.74 acres) and enhancement (1.49 acres) as described in the final mitigation plan approved by Ecology. The project site is located in Whatcom County, Sections 1, 6, 7, 12, 13, 18, 19, 24, 25, 30 – 32, and 36, Township 39N and 40N, and Range 2E and 3E in WRJA 1, Nooksack River. The project limits start at MP 5.90 and end at MP 12.62.

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 WSDOT, and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: Federal Permit Coordinator – MAP Team, 3190 160th Ave NE, Bellevue, WA, 98008, or via email (preferred), if possible, to the Coordinator assigned to this project . Any submittals shall reference Order No. 5155 and Corps No. 200700470.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on April 19, 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 shall be rescinded if the Corps does not issue an individual Section 404 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 construction superintendent, construction managers and lead workers, and state and local government inspectors.
8. 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.
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, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
10. The Applicant shall ensure that all appropriate Supervisors, Project Engineer(s), Contractor(s), and Project Inspector(s) 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 to Ecology a signed statement from each Project Engineer, Contractor, Inspector and appropriate Supervisors that they have read and understand the conditions of this Order and the referenced permits, plans, documents and approvals. These statements shall be provided to Ecology on the form provided (attachment A) no less than seven (7) days before construction begins at the project site. The Applicant shall also provide a signed statement to Ecology from each new Supervisor, Project Engineer, Contractor or Inspector hired or assigned after the project begins within seven (7) days of hiring.
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. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve WSDOT from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

C. Wetlands

1. The wetland mitigation shall be constructed as described in the Final Wetland Mitigation Report, SR 539: Tenmile to Badger Road (SR 546) Widening MP 5.90 to 12.62 dated October 2007. Any changes to the above referenced plan, beyond minor modifications, must be approved in writing by Ecology.
2. The Applicant shall notify Ecology of any changes to the amount of wetland to be impacted and the Applicant shall not impact those wetlands until they receive written approval from Ecology.

D. Construction Conditions

1. The Applicant shall comply with the conditions of the current Construction Stormwater Permit (National Pollutant Discharge Elimination System (NPDES) Permit) issued by Ecology for this project.
2. The Applicant shall submit a copy of the Stormwater Pollution Prevention Plan to the Federal Project Coordinator, in accordance with condition A.2 above, at least thirty (30) days prior to the beginning construction for review. The SWPPP shall be prepared in accordance with the requirements of the Construction Stormwater General Permit issued for this project.
3. Within the project limits¹, all environmentally sensitive areas including, but not limited to, wetlands, wetland buffers, and mitigation areas shall be fenced with high visibility construction fence (HVF) prior to commencing construction activities. Construction activities include equipment staging, materials storage, and worker-vehicle parking.
Note: This condition does not apply to activities such as pre-construction surveying and installing HVF and construction zone signage.
 - a. If the project will be constructed in stages² a detailed description and drawings of the stages shall be sent to Ecology for review at least 20 days prior to placing HVF.

¹ Project limits include mitigation sites, staging areas, borrow sources, and other sites developed or used to support project construction.

² A stage is part of a project that has been separated into at least two distinct areas to be built during separate timeframes.

- b. Condition E.3 shall apply to each stage.
 - c. All field staff shall be trained to: recognize HVF; understand its purpose; and properly install it in the appropriate locations.
 - d. HVF shall be maintained until all work is completed for each project or each stage of a staged project.
4. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.
 5. Staging areas shall be located a minimum of 50 feet from waters of the state, including wetlands. If a staging area must be located within 50 feet of a water of the state, then the Applicant shall provide a written explanation and obtain approval from Ecology's Federal Project Coordinator before placement of the staging area in the setback area.
 6. All construction debris shall be properly managed and disposed of in an approved upland disposal site.
 7. Turbid de-watering water associated with in-water work shall not be discharged directly to waters of the state, including wetlands. Turbid de-watering water shall be routed to an upland area for on-site or off-site settling.
 8. Clean de-watering water associated with in-water work that has been tested and confirmed to meet water quality standards may be discharged directly to waters of the state, including wetlands. The discharge outfall method shall be designed and operated so as not to cause erosion or scour in the stream channel, banks, or vegetation.
 9. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.

Equipment and Maintenance

10. Equipment used for this project shall be free of external petroleum-based products while used around the waters of the state, including wetlands. Accumulation of soils or debris shall be removed from the drive mechanisms (wheels, tires, tracks, etc.) and the undercarriage of equipment prior to its use around waters of the state, including wetlands.
11. 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.
12. Wash water containing oil, grease, or other hazardous materials resulting from wash down of equipment or working areas shall not be discharged into state waters, including wetlands. The applicant shall set up a designated area for washing down equipment.

13. No solvents or chemicals used for tool or equipment cleaning may be discharged to the ground or to waters of the state, including wetlands.
14. A separate area shall be set aside, which does not have any possibility of draining to surface waters, for the wash-out of concrete delivery trucks, pumping equipment, and tools.

Wiser Lake In-water Work

15. The work area shall be isolated prior to starting in-water work at Wiser Lake.
16. All bank protection and road widening construction at Wiser Lake shall be completed prior to releasing the water flow to the project area.

Culvert Replacement

17. Disturbance of the streambed and banks shall be limited to that necessary to replace the culvert and to construct any required channel modification associated with it. Affected streambed and bank areas outside the culvert shall be restored to pre-project or improved conditions following the culvert replacement work.
18. The stream diversion system shall be designed and operated so as to not cause erosion or scour in the stream channel or on the banks of the waterbody in which work is being conducted.
19. Prior to returning stream flow to the de-watered work area, all bank protection shall be completed.

Bridge Construction

20. No concrete shall be allowed to enter waters of the state during concrete pouring for bridge construction.
21. All forms used for concrete shall be completely sealed to prevent discharge of fresh concrete.
22. If saw-cutting of concrete is needed for demolition of on-site structures, containment methods are required to control and contain all saw-cut water and debris. The saw-cut water shall be disposed of upland with no possibility of entry to waters of the state, including wetlands.
23. All disturbed areas resulting from bridge construction shall be adequately stabilized within seven days after bridge work is completed so as to prevent erosion or sediment debris from entering a water of the state, including wetlands.

24. Riparian areas disturbed during bridge construction shall be replanted with native vegetation immediately upon project completion. All access roads shall be removed where feasible, and stabilized prior to project completion.

F. Timing Requirements

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

G. Notification Requirements

1. Notification shall be made to Ecology's Federal Project Coordinator in accordance with condition A.2 above for the following activities:
 - a. At least days prior to the pre-construction meeting.
 - b. At least 10 days prior to the onset of any work on site.
 - c. Immediately following a violation of the state water quality standards or any condition of this Order.

H. Emergency/Contingency Measures:

1. The Applicant shall develop and implement a spill prevention and containment plan for this project and shall have spill cleanup material available on site at all times during construction.
2. Any work that is out of compliance with the provisions of this Order, or producing conditions that are causing distressed or dying fish, or causing any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters is prohibited. If such work occurs, the Applicant shall comply with WSDOT's Environmental Compliance Assurance Procedure for Construction projects and Activities (March 10, 2003) and 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. In the event of finding distressed or dying fish, 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 receives further instructions from Ecology. 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. This work shall take precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.

- e. Immediately notify Ecology's Northwest Regional Spill Response Office at 425-649-7000 of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.
- f. Immediately notify the National Response Center at 1-800-424-8802 for spills to water.
- g. If at any time, the Applicant finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the Applicant shall immediately notify Ecology's Northwest Regional Spill Response Office at 425-649-7000.

I. 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:

Deliver your appeal in person to:

The Pollution Control Hearings Board OR
PO Box 40903
Olympia, WA 98504-0903

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:

Deliver your appeal in person to:

The Department of Ecology OR
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Penny Kelley
Department of Ecology
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 this 7th day of November, 2007 at Lacey, Washington.



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

Attachment A

Water Quality Certification Order #5155 Statement of Understanding

I, _____, state that, I will be involved as a WSDOT employee or an agent or contractor for Washington State Department of Transportation for SR 539 Tenmile to Badger Road Widening Transportation project in Whatcom County, Washington. I further state that I have read and understand the relevant conditions of Washington Department of Ecology **Water Quality Certification Order #5155** and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Company

Phone number

Address

City, State, and Zip Code