



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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October 25, 2007

REGISTERED MAIL
RB 252 946 571 US

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

RE: Water Quality Certification Order #5103 for Corps Public Notice No. 200700471 for the SR 9, 176th to Marsh Road transportation project in Snohomish County, Washington.

Dear Mr. Brown:

On April 19, 2007, the Department of Ecology (Ecology) received the Department of Transportation's (WSDOT) Joint Aquatic Resource Permit Application (JARPA) for a 401 Water Quality Certification (401 Certification) for the proposed the SR 9, 176th to Marsh Road transportation project. The project proposes to upgrade four intersections and widen SR 9 from two lanes to four lanes from SR 96 to Marsh Road. The project is located in Snohomish County, WA, starts at MP 4.22, and ends at MP 8.88. The U.S. Army Corps of Engineers issued a public notice for the project on July 12, 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 June 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.



This letter also serves as the State response to the Corps of Engineers' July 12, 2007 Public Notice.

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
Shorelands and Environmental Assistance Program
Department of Ecology

BM:pk
Enclosure

cc: Rebecca McAndrews, Corps of Engineers
Caroline Corcoran, Department of Ecology
Bobb Nolan, Department of Ecology
Katie Chamberlin, Department of Ecology
Jim Fraser, Department of Fish & Wildlife
Don Ponder, Department of Fish & Wildlife
Terry Drochak, Department of Transportation
Liz Kriewald, Department of Transportation

e-cc: Penny Keys, HQ
Loree' Randall, HQ
Bob Penhale, Water Quality Northwest Region

IN THE MATTER OF GRANTING A)	ORDER # 5103
WATER QUALITY)	Corps Reference No. 200700471
CERTIFICATION TO)	The project entails upgrading four intersections
Washington Department of)	and widening SR 9 from two lanes to four lanes
Transportation)	starting SR 96 and ending at Marsh Road. The
in accordance with 33 U.S.C. 1341)	project is located in Snohomish County, WA and
(FWPCA § 401), RCW 90.48.120, RCW)	starts at MP 4.22, ending at MP 8.88.
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, the Washington 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 issued a public notice for the project on July 12, 2007.

The proposed project entails upgrading four intersections and widening a section of SR 9 from two lanes to four lanes starting at SR 96 to Marsh Road. To accommodate the road widening, the Marsh Road/Airport Way/Springhetti Road will be shifted to the east approximately 150 feet. Approximately 1,282 linear feet of Thomas Creek Tributary running parallel to SR 9, will be relocated. In addition to the road widening and intersection upgrades, a stormwater detention pond will be constructed in the northwest quadrant of the SR 9 and 152nd St. intersection. This project will permanently impact 6.35 acres of wetlands in the project corridor from road widening and construction of the stormwater pond. The project site is located in Snohomish County, Sections 1, 11, 12, 24, and 36, Township 27N and 28N, and Range 5E in WRIA 7, Snohomish River. The project limits start at MP 4.22 and end at MP 8.88.

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.

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 as conditions shall be sent to Ecology's Headquarters, Attn: Federal Project Coordinator, P.O. Box 47600, Olympia, WA 98504-7600 or via e-mail (preferred) to the Coordinator assigned to this project. Notifications shall be made via phone and /or e-mail (preferred). All submittals and notifications shall be identified with Order No. 5103 and include the Applicant's name, project name, project location, the project contact and the contact's phone number.
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 project engineers, contractors, and other workers who have responsibility to direct work 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 statements (see Attachment A for an example) from all such personnel 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 per day 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. Stormwater

1. WSDOT shall monitor the ecology embankments' effectiveness as described in the SR 9 176th St. SE Vic. To SR 96 to Marsh Road I/S Ecology Embankment Monitoring Plan dated August 30, 2007 and approved by Ecology on September 4, 2007.

D. Wetlands

1. Impacts to aquatic resources shall be mitigated through the use of the Snohomish Basin Mitigation Bank. Credits to be withdrawn from the bank will be a total of 6.79 credits in accordance with the Snohomish Basin Mitigation Bank Instrument.
2. Prior to work beginning on this project the following shall be submitted to Ecology per condition A.2:
 - a. A credit ledger listing the Corps number and Ecology Order Number with the debited credits verifying credit withdrawal from the Snohomish Mitigation Bank.
 - b. Documentation that credits applied to the project have been registered, with the Corps number and Ecology Order # assigned to this project, at the Snohomish County Auditor's office.
3. Prior to starting any work that would impact Wetland 42, WSDOT shall submit a delineation for this wetland verifying the wetland boundaries and amount of impacts from this project.
4. Any changes to the amount of wetland impacts will require notification to Ecology and will need to be accurately reflected in the credit withdrawal ledger and mitigation memo, and shall be submitted in writing to Ecology's Federal Project Coordinator for verification.

E. Construction Conditions

1. The Applicant shall comply with the conditions of the current Construction Stormwater Permit [National Pollutant Discharge Elimination System (NPDES)] issued 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. All clearing limits, stockpile sites, staging areas, and trees to be preserved shall clearly be marked prior to commencing construction activities.

- a. All clearing limit, stockpile site, staging area, and tree-preservation marking shall be maintained until all work is completed for each project.
4. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.
5. 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.
 - i. Condition E.5 shall apply to each stage.
 - b. All field staff shall be trained to: recognize HVF; understand its purpose; and properly install it in the appropriate locations.
 - c. HVF shall be maintained until all work is completed for each project or each stage of a staged project.
6. 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.
7. All construction debris shall be properly managed and disposed of in an approved upland disposal site.
8. 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.
9. Clean de-watering water associated with in-water work that has been tested and confirmed to meet water quality standards may be discharged directly 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.

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.

Equipment and Maintenance

10. Equipment used for this project shall be free of external petroleum-based products while used around the waters of the stage, 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.
12. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall not be discharged into state waters. The applicant shall set up a designated area for washing down equipment.
13. No cleaning solvents or chemicals used for tool or equipment cleaning may be discharged to the ground or to waters of the state.
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.

Culvert Extension and Stream Relocation

15. If the culvert extension work occurs when there is flowing water in the channel, the following conditions apply:
 - a. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
 - b. Concrete process water shall not enter surface waters of the state. All concrete shall be completely cured prior to coming into contact with state surface waters. Any contact water discharged from a confined area with curing concrete shall be routed to upland areas to be treated and infiltrated, or disposed of appropriately with no possible entry to state waters.
 - c. Disturbance of the streambed and banks shall be limited to that necessary to lengthen 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 extension work.
 - d. The new channel shall be protected from temporary erosion using BMPs until stabilized by vegetation.

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 10 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 and 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, begin containment and cleanup efforts immediately and complete them 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.

3. 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 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.

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 OR
PO Box 40903
Olympia, WA 98504-0903

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:

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 25th day of October, 2007 at Lacey Washington.



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

ATTACHMENT A

**Washington State Department of Transportation
Water Quality Certification Order #5103
Statement of Understanding of
Water Quality Certification Conditions**

I have read and understand the conditions of Order #5103 Section 401 Water Quality Certification for the SR9, 176th to Marsh Road Project. I have also read and understand all permits, plans, documents, and approvals associated with the SR 9, 176th to Marsh Road Project referenced in this order.

Signature

Date

Title

Company