

IN THE MATTER OF GRANTING A) ORDER # 6939
WATER QUALITY) Corps Reference No. NWS-2008-1496-WRD
CERTIFICATION TO) Maintenance dredging and modification of
Port of Seattle) structures at Berth 1 of Terminal 115 in
in accordance with 33 U.S.C. 1341) Duwamish Waterway in Seattle, King County,
(FWPCA § 401), RCW 90.48.120, RCW) Washington
90.48.260 and Chapter 173-201A WAC)

TO: Mr. Jon Sloan
Port of Seattle
P.O. Box 1209
Seattle WA 98111

On December 5, 2008 the Port of Seattle 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 the Army Corps of Engineers for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on February 3, 2009.

The proposed work consists of maintenance dredging and modification of structures at Berth 1, Terminal 115. Maintenance dredging would remove 3,000 cubic yards (cy) of sediments from an area of about 16,700 square feet in front of Piers A, B, and C. All dredging will occur between the -10 and -18.5 feet Mean Lower Low Water (MLLW) line with a 2 foot overdredge allowance. The sediments would be removed via clamshell dredging. A minimum 1 foot clean sand layer, about 1,250 cy, would be placed within the dredge prism footprint after dredging. Final surface elevations within the dredge prism after the placement of the sand layer would be -15 and 17.5 ft MLLW.

Modification of structures includes:

1. Installation of a sheet pile retaining wall at the pier head line of Piers A, B, and C to ensure stability of the submarine slope. The proposed retaining wall would extend 430 linear feet horizontally and -15 ft MLLW vertically.
2. Removal of Pier B including the removal of 48 of 54 structural creosote-treated timber piles and all 10 fender piles. Six structural piles would remain in place to support the existing timber bulkhead. Approximately 20 cy of clean sand will be placed in all vacated piles holes (except those within the dredge prism) to provide containment of any contaminated sediment associated with the piles.
3. Installation of a new steel loading ramp with grating located immediately north of the demolished Pier B. The proposed ramp would be about 67.5 ft long by 24.5 ft wide. The ramp would be attached to a new concrete abutment located waterward of the Mean Higher High (MHHW) line.

4. Construction of a pile-supported A-frame ramp hoist over the new ramp, located about 35 ft waterward of the MHHW. The A-frame structure would consist of 4 supports, each support consisting of one 24-inch diameter steel pile and one 16-inch diameter steel batter pile for a total of 8 piles. A 25 ft long catwalk with grating would be installed from Pier C to the A-frame structure. The catwalk would vary in width between 4 and 10 ft with a maximum area of about 250 square ft of overwater coverage.
5. Replacement of damaged support piles. Up to 16 creosote treated timber support piles would be replaced with 13 to 16-inch diameter ACZA treated piles at Piers A and C.
6. Removal of 1 timber dolphin located at the northern portion of Berth 1 and installation of 3 new dolphins. Each new dolphin would consist of a 48-inch diameter steel vertical pile connected to the top of 5 24-inch diameter steel pipe batter piles. The 3 dolphins would consist of a total of 3 48- inch steel piles and 15 24-inch steel piles.
7. Replacement of the existing timber pile fender systems at the end of Piers A and C. The new fender systems will consist of 4 16-inch diameter steel fender piles at each pier, for a total of 8 steel fender piles.

The purpose of this work is to improve the safety, efficiency, and environmental performance of marine cargo loading/unloading at Terminal 115.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 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 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 Office, Attn: 401/CZM Federal Permit Coordinator, P.O. Box 47600 Olympia, WA 98504-7600 and/or hpre461@ecy.wa.gov. Any submittals shall reference Order #6939 and Corps Reference # NWS-2008-1507-WRD.
3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resources Permit Application (JARPA) received by Ecology on December 5, 2008. 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. 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.

6. 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.
7. 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.
8. 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.
9. 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.
10. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

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)(C).
2. The Water Quality Monitoring Plan will be reviewed and approved by Ecology.

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 Ecology.
2. All dredged material will be transported to an approved upland site. Information on the location of this site shall be provided to Ecology at the address shown in Condition A2 above prior to the start of dredging.

3. 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.
4. Dredged material shall not be stockpiled on a temporary or permanent basis below the ordinary high water line.
5. 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.
6. Dewatering water shall not be discharged into waters of the state unless it is adequately treated.
7. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.
8. A pre-dredge meeting is required to be convened at the Seattle Corps of Engineers office prior to the start of dredging. A **Dredging Plan** is required and shall be made available for review and approval by Ecology at least 2 weeks prior to the pre-construction meeting. The Applicant shall include all BMPs described in the e-mail from Jon Sloan of Port of Seattle dated July 13, 2009 in the Dredge Plan for this project. A copy of the plan shall be sent to the Federal Permit Coordinator at the address shown in Condition A2.
9. Prior to each dredging cycle, the Applicant shall contact the PSDDA agencies to determine whether additional sediment testing is required. If additional testing is required, no dredging or disposal shall be conducted until the material has been tested and a suitability determination has been issued. This area ranks high in potential for contamination and the recency determination extends to February 2010.
10. The Applicant shall collect and analyze core samples as described in the final (June 2009) QAPP for post-dredge subsurface sediment characterization. The resulting data shall be provided electronically to Ecology at the address provided in Condition A2 for review within 2 months of dredging completion or within six months of permit issuance, whichever is sooner.
11. The Applicant will conduct post-project cover monitoring as described in the final (June 2009) Sand Cover Monitoring plan. The resulting data shall be provided electronically to Ecology at the address provided in Condition A2 according to the schedule outlined in the final Sand Cover Monitoring plan (Table 2) and presuming a dredging completion date of no later than 4 months following permit issuance.

12. In-water and upland staging area erosion control BMPs (e.g., filter fences, silt curtains, bubble curtains etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting demolition or construction at the site.
13. During construction, reconstruction, and dredging, a containment boom (silt curtain) and 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 and dredging activities. Oil absorbent materials shall be deployed if any floating oil sheen is observed. The boom shall remain in place until all oily material and/or floating debris has been collected and sheens dissipate. All accumulated debris shall be collected and disposed of upland at an approved disposal site.

D. Engineered Cap:

1. The engineered sand cap for this project shall be composed of clean washed sand and topped with clean washed habitat mix in order to minimize the amount of sediment suspended during the capping process.
2. The silt curtain shall remain deployed until all visible turbidity has settled.
3. Stabilize all backfilled areas worked "in the dry" and work in stages as practicable so that sediment is not resuspended during high tide.

E. Piling Removal and Installation of New Piling:

1. In the event that pilings break off during extraction, the remaining piling may be removed by using a chain or a compressed air or hydraulically-operated saw.
2. The work surface on the barge deck or upland shall include a containment basin for piles and any debris 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. Accumulated wastewater from any storage area shall be treated prior to discharge.
3. All piling removed shall be disposed of at an approved upland disposal site. If the pilings cannot be removed completely, they shall be cut off at a minimum of two (2) feet below grade.
4. The piling should be removed immediately from the water onto the barge or 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.

5. All abandoned piling holes except those within the dredge prism shall be filled and capped with substrate consistent with the existing natural surrounding substrate, sand, and/or clean 1-inch minus well-rounded gravel.
6. All new pilings shall be steel or ACZA treated wood.
7. The Applicant shall employ a bubble curtain during installation of 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. 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.

F. 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 5 years from date of issuance. Continuing this project beyond the 5 year term of this Order will require separate certifications every 5 years.

G. Notification Requirements:

1. The Applicant shall provide notice to Ecology's 401/CZM Federal Permit Coordinator at least 7 days prior to the start of construction and within 14 days after completion of construction or dredging at the project site. Notification should be made using all the information required in Condition A2.

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 Ecology's 401/CZM Federal Permit Coordinator 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.

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:

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:

Department of Ecology
Shorelands and Environmental Assistance Program
Attn: Helen Pressley
P.O. Box 47600
Olympia, WA 98504

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>

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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 8-3-09 at Lacey, Washington.



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