

<p>IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO City of Des Moines Marina in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC</p>	<p>) ORDER # 6455) Corps Reference No. NWS-2008-956-NO) Promenade and bulkhead replacement, dredging) of up to 3,900 cy of sediment, replacement of the) activity float and travel lift, and other upland) work in East Passage, Puget Sound, King) County, Washington</p>
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TO: Mr. Joe Dusenbury
City of Des Moines Marina
22307 Dock Ave S
Des Moines WA 98198

On September 12, 2008 the City of Des Moines 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 November 13, 2008.

Work to be done will consist of:

Waterfront promenade and bulkhead replacement: Approximately 472 linear feet (lf) of an existing bulkhead will be removed and relocated up to 4 feet (ft) waterward of its existing location and approximately 312 lf of bulkhead up to 15 ft landward of its existing location. The 725 lf creosote treated lumber bulkhead will be replaced with a 784 lf steel sheetpile bulkhead. Bulkhead removal will also remove 91 creosote treated timber piling. The new bulkhead will be 6 to 12 inches higher than the existing bulkhead in anticipation of impacts to water levels resulting from climate change.

Bulkhead relocation will require dredging of up to 2,400 cubic yards (cy) of sediment in the northeast corner of the marina and the placement of up to 1,500 cy of rock material in front of the new bulkhead to reshape the slope. Dredged material will be disposed of at an approved upland facility. Other non-regulated work includes the excavation of up to 850 cy of upland material in order to install the bulkhead landward of the existing location.

Activity Float: 5,168 square feet (sq ft) of timber deck, 103 creosote treated timber piling and 3 support floats will be removed. A 2,592 sq ft concrete activity float with 13% grating and 3 steel guide pipe piling will be installed. The activity float is proposed in order to add Americans with Disabilities Act approved access to moorage floats, boat access to docks, a gathering area for on-water marina events, and potentially a restroom, septic pumpout holding tank, benches, and/or a storage rack for dock carts.

Travel Lift: Approximately 1,500 cy of sediment will be dredged from in front of the existing bulkhead for a replacement lift. Dredged material will be disposed of at an approved upland facility. A 1,291 sq ft creosote-treated timber pier and deck, and 28 creosote treated timber

piling will be removed. A 150 sq ft concrete travel lift pier and a 120 sq ft staging float with 7 – 18 inch diameter steel piling will be installed. Other non-regulated work to be done includes excavation of up to 650 cy of soil from behind the existing bulkhead to support the replacement travel lift and bulkhead relocation.

Tidal Grid: 203 sq ft of tidal grid will be removed by removing 150 sq ft of creosote treated lumber and 12 creosote treated piling.

The purpose of this work is to provide public recreation via a waterside promenade, a community gathering area, and reconfiguration of the marina, and to provide maintenance of a deteriorating bulkhead.

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 City of Des Moines Marina 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 #6455 and Corps Reference # NWS-2008-956-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 September 12, 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 the Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

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.

C. Dredging and Disposal:

1. Dredging is to be done using a clamshell bucket, or land-based equipment. Use of any other type of dredge will require prior approval from Ecology.
2. All dredged material will be transported upland to an approved disposal facility.
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.

D. Conditions for Construction Activities:

1. Construction stormwater, sediment, and erosion control best management practices (BMPs: e.g. geotextile fencing, drain filtration, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
2. Sediment and erosion control measures shall be inspected and maintained during construction.
3. Construction debris shall be stored upland of the ordinary high water mark so that it cannot enter the water or cause water quality degradation. All debris shall be properly disposed of on land.
4. Wash water containing oils, grease, sediment, or other hazardous materials resulting from washdown of equipment or working areas shall be contained for proper disposal and shall not be discharged into state waters or storm drains.
5. Applicant shall obtain and comply with a Construction Stormwater General Permit for this project.

Work in Marine Waters:

1. During project demolition or 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 stored upland and disposed of at an approved site.
2. The Applicant shall use tarps or other containment methods when cutting or drilling over water to prevent sawdust and other materials from entering the water.

Piling Removal:

1. Piles shall be moved immediately to the water over a barge or onto uplands. Piles shall not be shaken, hosed off, left hanging to drip or any other action intended to clean or remove adhering material from the pile.
2. The work surface on the barge deck or on uplands shall include a containment basin for piles and any material removed during pulling of the piling. Basins may be constructed of durable plastic sheeting with sidewalls supported by hay bales or a support structure to contain all sediment.

3. Sediment and water from the poles shall not be discharged into waters of the state. All piling shall be disposed of at an approved upland site.

E. 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 five 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 fourteen (14) days prior to the start of construction and within fourteen (14) days after completion of construction or dredging at the project site. Notification should be made using all the information required in Condition A2.

G. 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 stop work immediately in the vicinity and notify Ecology using the above phone numbers.

H. 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 mail a copy of your appeal to:

Department of Ecology
Headquarters
Attn: Helen Pressley
P.O. Box 47600
Olympia, WA 98504

For additional information visit the Environmental Hearings Office Website:
<http://www.cho.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 June 1, 2009

at Lacey, Washington.



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

ATTACHMENT A

**City of Des Moines North Marina
Marina Maintenance Dredging Project
Water Quality Certification Order #6455**

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

I have read and understand the conditions of Order #6455 Section 401 Water Quality Certification for the City of Des Moines North Marina project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this order.

Signature

Date

Title