



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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December 16, 2008

REGISTERED MAIL
RB 252 946 917 US

John Maas
Washington State Department of Transportation
Northwest Region
P.O. Box 330310
Seattle, WA 98133-9710

RE: Water Quality Certification Order No. 6271 for the I-5, Fisher Creek Vicinity to Dakota Creek Vicinity Project in Skagit and Whatcom Counties, Washington.

Dear Mr. Maas:

On October 30, 2008, the Department of Ecology (Ecology) received the Washington State Department of Transportation's (WSDOT) Joint Aquatic Resource Permit Application (JARPA) for a 401 Water Quality Certification (401 Certification) for the proposed Interstate 5 (I-5), Fisher Creek Vicinity to Dakota Creek Vicinity Project. The U.S. Army Corps of Engineers issued a Nationwide Permit (NWS-2008-1393-SOD) for the project on November 5, 2008, and Ecology issued a public notice for the project on November 19, 2008.

WSDOT proposes to improve stormwater quality along I-5 in the drainage basins of the following five streams: Fisher Creek, Chuckanut Creek, Padden Creek, Squalicum Creek and Dakota Creek. The project includes installing compost amended vegetated filter strips (CAVFS) along approximately three miles of existing I-5 ditches and constructing seven permanent check dams in the non-fish bearing tributary of Padden Creek.

The proposed work will permanently impact approximately 200 square feet (<0.01 acre) of area below the ordinary high water mark of the tributary to Padden Creek.

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.



Washington State Department of Transportation
I-5, Fisher Creek Vicinity to Dakota Creek Vicinity, Order # 6271
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If you have any questions, please contact Katie Chamberlin, Federal Project Coordinator, at (425) 649-7181 or at kach461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in Condition I.

Sincerely,



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

cc: Multi-Agency Permitting (MAP) Team
Maria Mayrhofer, Department of Transportation

e-cc: ecyrefedpermit@ecy.wa.gov

IN THE MATTER OF GRANTING) ORDER No. 6271
A WATER QUALITY) Corps Reference No. NWS-2008-1393-SOD
CERTIFICATION TO) Improve stormwater quality in the drainage basins
Washington State Department of) of five streams located in Skagit and Whatcom
Transportation) Counties.
in accordance with 33 U.S.C. 1341)
(FWPCA § 401), RCW 90.48.120,)
RCW 90.48.260 and Chapter 173-201A)
WAC)

TO: Washington State Department of Transportation
Attn: John Maas
P.O. Box 330310
Seattle, WA 98133-9710

On October 30, 2008, the Washington State Department of Transportation (WSDOT) submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. On November 19, 2008, Ecology issued a public notice for the project pursuant to the provisions Chapter 173-225 WAC.

WSDOT proposes to improve stormwater quality along Interstate 5 (I-5) in the drainage basins of the following five streams: Fisher Creek, Chuckanut Creek, Padden Creek, Squaticum Creek and Dakota Creek. WSDOT will install compost amended vegetated filter strips (CAVFS) along existing I-5 ditches to improve water quality treatment of highway stormwater runoff before it enters fish-bearing streams. Additionally, WSDOT will construct check dams in the non-fish bearing tributary of Padden Creek to reduce scour, slow stormwater runoff velocity, and trap sediment to improve water quality before the stream enters Padden Creek.

The project site is located in Skagit and Whatcom counties, Sections 7, 18, 19 and 29, Townships 37N, 38N, and 33N, Ranges 3E and 4E in WRAs 1, Nooksack Watershed, and 3, Lower Skagit/Samish Watershed.

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 water quality standards or other state laws. 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, Ecology grants water quality certification to WSDOT subject to this Order's conditions.

Certification of this proposal does not authorize the WSDOT 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 WSDOT from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

A. General Conditions

1. The term "Applicant" shall mean the Washington State Department of Transportation and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent to Ecology's Northwest Regional Office, Attn: Federal Project Coordinator – MAP Team, 3190 160th Avenue SE, Bellevue, WA 98008, or via e-mail to the Coordinator assigned to this project (preferred). All submittals shall reference Order No. 6271 and Corps No. NWS-2008-1393-SOD.
3. Authorized work is limited to that described in the October 30, 2008 JARPA and supplemental information. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA or supplemental information becomes void through unauthorized changes to the project.
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 an Order modification is necessary.
5. This Order does not exempt, and is provisional upon, compliance with other statutes and codes administered by federal, state, and local agencies.
6. 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.

7. 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.
8. 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.
9. The Applicant shall ensure that all appropriate project engineers, contractors, and other workers at the project site with responsibility for directing work, 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 individual that she or he has read and understands the Order's conditions and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins.
10. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically allowed.
11. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to \$10,000.00 per violation for each day of continuing noncompliance.

B. 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 ten days prior to the pre-construction meeting
 - b. At least seven days prior to the onset of any work on site
 - c. At least seven days prior to the onset of in-water work
 - d. At least seven days within project completion
 - e. Immediately following a violation of water quality standards or any condition of this Order

C. Water Quality

1. The Applicant shall submit for approval a Water Quality Monitoring and Protection Plan (WQMP) to the Federal Project Coordinator in accordance with condition A.2. at least 20

days prior to beginning in-water activities. **In-water work is not authorized to begin until Ecology indicates its approval.**

- a. The WQMP shall include, at least, the following:
 - i. the name(s) and phone number(s) of the Pollution Control inspector and the person responsible for onsite monitoring and reporting
 - ii. the BMPs and procedures to be used to protect water quality during specific proposed in-water activities
 - iii. a water monitoring plan for turbidity, as appropriate
 - iv. a map with numbered or named sampling locations associated with the in-water activities that require monitoring
- b. A background sample shall be collected at the beginning of each sample event.
- c. Ecology must approve, in writing, any changes or additions.
- d. Monitoring results shall be submitted monthly to the Ecology Federal Project Coordinator, per condition A.2.
- e. Mitigation or additional monitoring may be required if water quality standards are not met.

D. Construction Conditions

1. The Applicant shall comply with the conditions of the current Construction Stormwater Permit National Pollutant Discharge Elimination System (NPDES) for this project.
2. Within the project limits¹, all environmentally sensitive areas including, but not limited to, wetlands, wetland buffers, streams, and stream buffers 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.
 - b. Condition E.2. 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.

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.

- d. HVF shall be maintained until all work is completed for each project or each stage of a staged project.
3. All clearing limits, stockpile sites, staging areas, and trees to be preserved shall clearly be marked prior to commencing construction activities. All 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. Work in or near waters of the state shall be done in a manner that minimizes turbidity, erosion, and other water quality impacts.
6. No petroleum products, fresh concrete, lime, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
7. All construction debris, excess sediment, and other waste material shall be properly managed and disposed of in an upland disposal site approved by the appropriate regulatory authority.
8. Staging areas will be located a minimum of 50 feet and, where practicable, 200 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 placing the staging area in the set back area.
9. Equipment used during construction shall be serviced, fueled, and maintained on upland areas in order to prevent contamination of surface waters. All fueling areas shall be provided with adequate spill containment. Equipment and vehicle fueling shall not occur within 50 feet of state waters and wetlands.
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.
12. All disturbed stream bank areas shall be protected from temporary erosion using BMPs until stabilized by vegetation.

E. Timing Requirements

1. This Order is valid until the Applicant meets all its requirements and conditions.
2. In-water work is subject to a fishery closure window determined by Washington Department of Fish and Wildlife's Hydraulic Project Approval (HPA). All in-water work shall be completed by the work window identified in the most current HPA issued for this project.

F. 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. Notify Ecology's Federal Project Coordinator within 24 hours of a spill event as described in condition H.2.d.
 - h. Submit a detailed written report to Ecology within five 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. 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.

G. Appeal Process:

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearing 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.

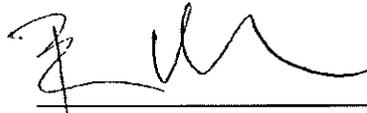
1. To file your appeal with the Pollution Control Hearing Board.		
Mail appeal to: The Pollution Control Hearings Board PO Box 40903 Olympia WA 98504-0903	OR	Deliver your appeal in person to: The Pollution Control Hearings Board 4224 – 6th Ave SE Rowe Six, Bldg 2 Lacey, WA 98503
2. To serve your appeal 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 packet to:		

Katie Chamberlin
Department of Ecology
3190 160th Ave SE
Bellevue, WA 98008-5452

*For additional information: Environmental Hearings Office Website: <http://www.eho.wa.gov>
To find laws and agency rules: Washington State Legislator Website: <http://www.l.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 Dec 16, 2008 at Lacey, Washington.



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

Water Quality Certification Order No. 6271 Statement of Understanding

I, _____, state that I will be involved as a Washington State Department of Transportation (WSDOT) employee or an agent or contractor for WSDOT for the I-5, Fisher Creek Vicinity to Dakota Creek Vicinity Project located in Skagit and Whatcom counties, Washington. I further state that I have read and understand the relevant conditions of Washington Department of Ecology's **Water Quality Certification Order No. 6271** 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

