



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

January 21, 2009

REGISTERED MAIL
RB 670 439 722 US

Great Western Lumber Company
PO Box 159
Everson, WA 98247

**RE: Water Quality Certification Order #6373 for U.S. Army Corps of Engineers
Reference #NWS-2006-106-CR, Great Western Lumber Swift Creek Flood
Reduction Project, Swift Creek, Everson, Whatcom County, Washington**

Dear Sir or Madam:

On August 19, 2008, Great Western Lumber Company submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act (CWA) for the proposed Great Western Lumber Swift Creek Flood Reduction project. The Corps issued a joint public notice for a Section 404 Permit on October 23, 2008, for the proposed project.

The applicant proposes to retain fill (weirs) installed prior to authorization, and place additional fill and excavate accumulated sediments.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the August 19, 2008 JARPA and the October 23, 2008 public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129 or email at rpad461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Erik Stockdale, Unit Supervisor
Northwest Regional Office
Shorelands and Environmental Assistance Program

ES:rrp:cja

(Over)



Enclosure

cc: Randel Perry, U.S. Army Corps of Engineers
Jeff Kamps, Washington Department of Fish and Wildlife
Tom Westergreen, Great Western Lumber Company
Christopher Street, Ostrom Farms
Krista Rave-Perkins, U.S. Environmental Protection Agency
Michael Szerlog, U.S. Environmental Protection Agency

E-cc: Barry Wenger – BFO
Susan Meyer – NWRO
Richard Grout – BFO
Mak Kaufman – BFO
Mary O'Herron – BFO
Pete Kmet – HQ
Loree' Randall – HQ
Raman Iyer – NWRO
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A)	ORDER #6373
WATER QUALITY)	Corps Reference No. NWS-2006-106-CR
CERTIFICATION TO)	Great Western Lumber Swift Creek Flood
Great Western Lumber Company)	Reduction Project; Swift Creek, Everson,
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: Great Western Lumber Company
 PO Box 159
 Everson, WA 98247

On August 19, 2008, Great Western Lumber Company submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on October 23, 2008.

Prior to 1 February 2008, the applicant had constructed catch basins via installation of weirs and excavated material from the creek channel without authorization. Proposed work therefore includes:

- Retain four in-stream weirs constructed of ecology blocks and large rock (approximately 622 cubic yards in 0.06 acre of channel) to capture coarse sediment.
- Installation of fill to divert flow and provide protection for an existing pipeline (approximately 1,150 cubic yards in 0.10 acre of stream channel)
- Excavation of up to 10,000 cubic yards of accumulated sediments from four catch basins annually.

The project has been revised from the original proposal. During a flood event from 7 January 2009 to 10 January 2009, the left bank of the creek between weirs 1 and 2 experienced severe erosion. A 300-foot-long by 15-foot-wide section of the bank was lost, bringing the creek channel to within 4 feet of an existing access road constructed between the creek and a forested slope. The road is used by the Applicant and numerous government agencies to access the toe of the landslide area that contributes sediments to the creek channel. The Applicant proposes to utilize sediments in the channel to undertake bank restoration work along 300 linear feet of the creek. Work involves using an excavator and front loader to rebuild the bank and provide a buffer between the creek and the existing access road. The Applicant also proposes to replace riprap used for abutment armoring at the on-site bridge that was dislodged during the flood event.

The project would relieve aggradation and flooding problems and reduce downstream transport of naturally contaminated sediments.

The excessive sediment in Swift Creek is caused by a large, complex landslide in the upper watershed on Sumas Mountain. Approximately 150,000 cubic yards of material move into the creek system annually. The exposed slide material contains naturally-occurring elevated levels of asbestos, nickel, manganese, cobalt, chromium, and magnesium. These chemicals are present in amounts toxic enough to prevent vegetation from growing on the slide material, and Swift Creek has no resident fish.

The project is located at 7400 Goodwin Road, Everson, Whatcom County, Washington, Swift Creek, Section 34, T. 40 N., R. 4E., WRIA 1.

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:

- A1. For purposes of this Order, the term "Applicant" shall mean Great Western Lumber Company and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #6373 and Corps Reference #NWS-2006-106-CR.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on August 19, 2008, and the letter from Tom Westergreen, Great Western Lumber, dated January 13, 2009, requesting emergency authorization. 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.
- A4. 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.
- A5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual Section 404 permit.
- A6. This Order does not exempt, and is provisional upon, compliance with other statutes and codes administered by federal, state, and local agencies.
- A7. 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.
- A8. 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.
- A9. 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.

- A10. 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 or mitigation sites.
- A11. 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.
- A12. 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. Material Management:

- B1. The Applicant shall maintain all dredged material on site unless otherwise authorized by Ecology.
- B2. The dredged material from Swift Creek shall be placed in an upland location so that it does not re-enter state waters, including but not limited to streams, wetlands, lakes, rivers, estuaries, marine waters, or any other waters of the state.

C. Conditions for In-Water Activities:

General Conditions:

- C1. Construction stormwater, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
- C2. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- C3. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.

- C4. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
- C5. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- C6. All manmade debris that has been deposited below the Ordinary High Water Line within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Concrete blocks, metal debris, cables, submerged timbers and other debris in the construction work corridor that have washed into freshwater areas shall be removed from the project area.

D. Emergency/Contingency Measures:

- D1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- D2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
- D3. 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.
- D4. 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 shall immediately take the following actions:
 - a. Cease operations at the location of the violation or spill.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to 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 (425) 649-7129 or (425) 649-7000.

- d. 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.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

- D5. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology or WDFW that fisheries resources may be adversely affected.

E. Timing Requirements

- E1. This Order expires five (5) years from the date of issuance. A new 401 Certification must be obtained prior to expiration in order to continue excavation of sediments in Swift Creek beyond five years.

F. Reporting and Notification Requirement Conditions

- F1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of construction and within 14 days after completion of construction at the project site. Notification, referencing Corps Reference #NWS-2006-106-CR, Order #6373 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

G. 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
Northwest Regional Office
Attn: Rebekah Padgett
3190 160th Avenue SE
Bellevue, WA 98008

For additional information visit the Environmental Hearings Office Website:

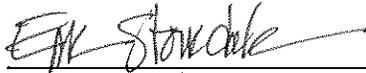
<http://www.eho.wa.gov>

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 January 21, 2009 at Bellevue, Washington.



Erik Stockdale, Unit Supervisor
Northwest Regional Office
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A

**GREAT WESTERN LUMBER COMPANY
GREAT WESTERN LUMBER SWIFT CREEK FLOOD REDUCTION PROJECT
Water Quality Certification Order #6373**

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

I have read and understand the conditions of Order #6373 Section 401 Water Quality Certification for the Great Western Lumber Swift Creek Flood Reduction Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

Signature

Date

Title

Company