



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

May 22, 2009

CERTIFIED MAIL
7005 1820 0000 6708 4460

Cemex
6300 Glenwood Avenue
Everett, WA 98203

RE: Water Quality Certification Order #6731 for U.S. Army Corps of Engineers Reference #NWS-2008-825-NO, Cemex Delta Site Barge Off-Load Facility Project, Snohomish River, Everett, Snohomish County, Washington

Dear Sir or Madam:

On June 10, 2008, Cemex 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 Cemex Delta Site Barge Off-Load Facility project. Ecology issued a public notice on March 11, 2009, for the proposed project.

The applicant proposes to relocate its facility to the new site for off-loading aggregate from barges. Construction of the new facility includes a fixed pier with associated catwalks, dolphin, crane, hopper, and conveyor. The project also includes replacement of approximately 50 linear feet of bulkhead, construction of four new stormwater outfalls, and removal of existing structures as mitigation.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the June 10, 2008 JARPA and the March 11, 2009 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 rp461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Geoff Tallent, Section Manager
Northwest Regional Office
Shorelands and Environmental Assistance Program

ES:rrp:cja

Enclosure

cc: Jonathan Smith, U.S. Army Corps of Engineers
Wendell Johnson, Reid Middleton, Inc.
Laura Arber, Washington Department of Fish and Wildlife
Dan Tonnes, NOAA Fisheries
Ron Malecki, US Fish and Wildlife Service
Brendan Werden, Washington Department of Natural Resources
Steve Van Slyke, Puget Sound Clean Air Agency

e-cc: David Pater – NWRO
Barbara Nightingale – NWRO
Paul Anderson – NWRO
Jerry Shervey – NWRO
David South – NWRO
Loree' Randall – HQ
Raman Iyer – NWRO
Clay Gustaves, Williams Northwest Pipeline Clay.Gustaves@Williams.com
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A) ORDER #6731
WATER QUALITY) Corps Reference #NWS-2008-825-NO
CERTIFICATION TO) Cemex Delta Site Barge Off-Load Facility
Cemex) Project; Snohomish River, Everett, Snohomish
in accordance with 33 U.S.C. 1341) County, Washington.
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: Cemex
6300 Glenwood Avenue
Everett, WA 98203

On June 10, 2008, Cemex submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on March 11, 2009.

Construction of the new facility includes:

- Remove the existing timber fuel pier: 2,875 square feet of decking and 87 timber piles.
- Remove 66 additional existing timber piles.
- Remove a sunken barge: 7,493 square feet of timber hull filled with earth.
- Repair a portion of timber bulkhead: Replace up to 305 linear feet of timber bulkhead with steel sheetpile bulkhead and fill in front of damaged sections.
- Shoreline restoration: Cut back and shape the shoreline at the site of the sunken barge removal, place approximately 740 cubic yards of sandy gravel habitat mix.
- Install an approach pier: 4,950-square-foot concrete deck supported by 36 24-inch-diameter steel or concrete piles.
- Install a main pier: 14,930-square-foot concrete deck supported by 111 24-inch-diameter steel or concrete piles.
- Install a crane platform: 900-square-foot concrete deck supported by 17 24-inch-diameter steel or concrete piles.
- Install a vehicle ramp: 1,815-square-foot deck and pile cap supported by 4 24-inch-diameter steel or concrete piles.

- Install two vehicle ramp towers: 6 24-inch-diameter steel or concrete piles and 70 square feet of horizontal steel superstructure.
- Install seven dolphins: total of 28 24-inch-diameter steel or concrete piles and a 1,010-square-foot steel or concrete deck.
- Install 720 linear feet of catwalks: 3,850 square feet of steel bar grating deck supported by 11 24-inch-diameter steel or concrete piles.
- Install a fixed revolving crane on the crane platform for loading and unloading barges.
- Install a receiving hopper and conveyors on the main and approach piers.
- Re-grade and pave portions of the site, incorporating a modern stormwater management system with four new outfalls.
- Associated upland work: site paving and grading, construction of ecology block three-sided bins for aggregate storage, installation of portions of asphalt and cement batch plants as well as a soil remediation plant, underground utility work, and construction of stormwater conveyance and treatment facilities.

In addition to removal of the existing fuel pier and piles and the shoreline restoration described above, approximately 10,400 square feet of riparian planting will be conducted along the shoreline behind the restored beach to compensate for the impacts. Approximately 15,300 square feet of intertidal zone from Ordinary High Water to +4 feet Mean Lower Low Water will be restored.

The project is located at 17 Marine View Drive, Everett, Snohomish County, Washington, Snohomish River, Section 8, T. 29 N., R. 5E., WRIA 7.

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 Cemex 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 #6731 and Corps Reference #NWS-2008-825-NO.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on June 10, 2008. 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. 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.
- A7. 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.
- A8. 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.
- A9. 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.
- A10. 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.
- A11. 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. Riparian Plantings:

- B1. Riparian plantings shall be completed per the *Riparian Planting Plan for the CEMEX Delta Site Redevelopment, Everett, Washington*, prepared by Pentec Environmental, dated 8/5/08, except as modified by this Order.

C. Water Quality Conditions:

- C1. In-Water Construction Water Quality Sampling and Monitoring: A Water Quality Protection and Monitoring Plan (Plan) shall be developed and implemented. "In-water construction" is defined as all work below the high water mark of Snohomish River.

The Applicant shall submit the Plan for Ecology review and approval per Condition #A2 at least 20 days prior to the start of in-water work.

The Plan shall include the following minimum requirements:

- a. Locations of samples: Locations of water quality sampling sites shall be identified and described in the Plan and on a map of the project area. At a minimum, sampling shall take place at the point of compliance as specified in WAC 173-201A-200(1)(e)(i), which allows a 150-foot temporary area of mixing for turbidity resulting from disturbance of in-place sediments in Snohomish River. Background samples shall be collected outside the area of influence of the in-water work. Background samples shall be collected at the same frequency as the point of compliance samples.
- b. Number of samples: Number and frequency of water quality samples to be taken.
- c. Parameter to be sampled: Turbidity shall be sampled for this project.
- d. Equipment: Sampling for turbidity is to be accomplished using a turbidometer properly calibrated according to the operator's manual.
- e. Best Management Practices (BMPs): A description of the BMPs that will be used during construction to protect water quality.
- f. Detection of exceedances: Water quality standards for turbidity in "Salmonid Spawning, Rearing, and Migration" waters are as follows: turbidity shall not exceed 5 NTU over background conditions when the background is 50 NTU or less, or a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. If exceedances of this standard at the point of compliance specified in WAC 173-201A-200(1)(e)(i) is detected through water quality sampling and monitoring, the Applicant shall immediately take action to stop, contain, and prevent unauthorized discharges or otherwise stop the violation and correct the problem. After such an event, the Applicant shall assess the efficacy of the site BMPs and update or improve the BMPs used at the work site in an effort to reduce or prevent recurrence of the turbidity exceedance.
- g. Reporting: If no exceedances are detected, results of water quality sampling, as determined by the Plan, shall be forwarded to Ecology on a monthly basis in accordance to Condition A2.
- h. Notification of exceedances: Notification of exceedances that are detected through water quality sampling shall be made to Ecology within 24 hours of occurrence. Notification shall be made with reference to Order #6731, Attn: 401/CZM Federal

Project Manager, by telephone at (425) 649-7129 or (425) 649-7000, or by fax to (425) 649-7098. The Applicant shall, at a minimum, provide Ecology with the following information:

- i. A description of the nature and cause of exceedance.
- ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance.
- iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
- iv. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the exceedance, turbidity results and location, photographs, and any other pertinent information.

D. Conditions for Construction Activities:

General Conditions:

- D1. Applicant shall obtain and comply with a Construction Stormwater General Permit for this project.
- D2. 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.
- D3. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- D4. Work shall be accomplished per the BMPs described in the following documents, except as modified by this Order:
 - *Draft Biological Evaluation, CEMEX Redevelopment, Everett, Washington*, prepared by Pentec Environmental, dated May 27, 2008, pages 7-8.
 - *BE Addendum 1, CEMEX Redevelopment*, prepared by Pentec Environmental, dated August 5, 2008, pages 2-3.
 - Letter from Wendell Johnson, Reid Middleton, Inc., to Rebekah Padgett, Washington State Department of Ecology, RE: Cemex Delta Site Barge Off-Load Facility,

Snohomish River, Everett, Snohomish County, Washington, dated September 12, 2008, pages 1-2.

- D5. 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.
- D6. 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.
- D7. 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.
- D8. Clean Fill Criteria: Applicant shall ensure that fill (soil and sand) placed for the proposed project does not contain toxic materials in toxic amounts.
- D9. 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.

Work in Fresh Waters:

- D10. 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 collected and disposed of upland at an approved disposal site.
- D11. The Applicant shall use tarps or other containment method when cutting or drilling over water to prevent debris, sawdust, concrete and asphalt rubble, and other materials from entering the water.
- D12. During construction, the Applicant shall have a boat available on site at all times to retrieve debris from the water.
- D13. 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 marine areas shall be removed from the project area.
- D14. Project activities shall be conducted to minimize siltation of the beach area and bed.

- D15. The Applicant shall operate the barge(s) and tug in deep water so as to minimize nearshore propeller wash impacts such as suspension of nearshore sediments.
- D16. Barges shall not be allowed to ground-out during construction.
- D17. If cast in place, wet concrete/grout shall be prevented from entering waters of the state. Forms for any concrete/grout structure shall be constructed to prevent leaching of wet concrete/grout. Impervious materials shall be placed over any exposed concrete/grout not lined with the forms that will come in contact with state waters. Forms and impervious materials shall remain in place until the concrete/grout is cured.

Piling Removal Conditions:

- D18. Approximately 153 existing timber piles shall be removed from fresh waters. All piling shall be removed by vibratory extraction. In the event these pilings break off during extraction, the remaining piling shall be cut below the mudline.
- D19. Piles, stubs, debris, and all associated excavated sediments shall be contained and prevented from entering waters of the state.
- D20. Piles removed from substrate: the pile shall be moved immediately from the water into the barge or onto 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.
- D21. Work surface on the barge deck or on uplands shall include a containment basin for piles and any sediment 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.
- D22. The piles and any sediment removed during pulling of the piling shall be disposed of at an approved upland disposal site.

Pile Driving:

- D23. The new pilings shall be concrete or steel.
- D24. The concrete pilings shall be installed using an impact hammer.
- D25. The steel pilings shall be installed using a vibratory hammer whenever possible. An impact hammer may be used to proof pile, if needed.

- D26. If an impact hammer is used, a block of wood at least six (6) inches thick shall be placed between the impact pile driver and the pile, or a bubble curtain shall be employed, to minimize in-water noise during installation of steel piles 10 inches in diameter or less. The Applicant shall employ a bubble curtain during installation of steel 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. If any fish are seen to be in distress, work shall immediately cease and a bubble curtain shall be deployed before the driving is completed.

Sheet Pile Wall Driving:

- D27. The new sheet pile wall shall be steel.
- D28. The steel sheet pile wall shall be installed using a vibratory hammer whenever possible. An impact hammer may be used to proof sheet pile, if needed.

E. Facility Operational Conditions:

- E1. During operation of the facility the Applicant shall obtain and comply with a new Sand and Gravel General Permit for this facility. During operation of the facility the temporary area of mixing established in WAC 173-201A-200 and referenced in Condition C1 above **does not apply**.

Barge Offloading:

- E2. The Applicant shall implement BMPs for barge offloading per the BMPs described in the following documents, except as modified by this Order:
- Letter from Jon Houghton, Pentec Environmental, to Jonathan Smith, U.S. Army Corps of Engineers, RE: BE Addendum 1 – CEMEX Redevelopment, dated August 5, 2008, pages 2-5.
 - Letter from Wendell Johnson, Reid Middleton, Inc., to Rebekah Padgett, Washington State Department of Ecology, RE: Cemex Delta Site Barge Off-Load Facility, Snohomish River, Everett, Snohomish County, Washington, dated September 12, 2008, pages 2-3.
- E3. All portions of gravel conveyors passing overwater shall be enclosed with a pan beneath the conveyor to capture fugitive gravel particles and a lid over the conveyor to prevent wind-blown or rain-washed discharges.

E4. The offload hopper at the end of the pier shall be of a sufficient dimension to easily accept the largest loader bucket anticipated for offloading operations in order to minimize gravel spillage.

E5. Curbing shall be constructed on the pier deck surface in order to prevent gravel spillage.

F. Emergency/Contingency Measures:

F1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.

F2. 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.

F3. 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.

F4. 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.

G. Timing Requirements

G1. This Order is valid until all compliance requirements in this document have been met.

H. Reporting and Notification Requirement Conditions

H1. 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-2008-825-NO, Order #6731 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

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

Deliver your appeal in person to:

The Department of Ecology
OR 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 May 22, 2009 at Bellevue, Washington.



Geoff Tallent, Section Manager
Northwest Regional Office
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A

**CEMEX
CEMEX DELTA SITE BARGE OFF-LOAD FACILITY PROJECT
Water Quality Certification Order #6731**

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

I have read and understand the conditions of Order #6731 Section 401 Water Quality Certification for the Cemex Delta Site Barge Off-Load Facility 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