



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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December 23, 2008

REGISTERED MAIL

RB 252 946 934 US

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

RE: Water Quality Certification Order No. 6336 for the SR 410, White River Chronic Environmental Deficiency Project in Pierce and King Counties.

Dear Mr. Brown:

On October 23, 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 State Route (SR) 410, White River Chronic Environmental Deficiency (CED) Project. The U.S. Army Corps of Engineers issued a Nationwide Permit (NWS-2008-331-SOD) for the project on July 24, 2008, and Ecology issued a public notice for the project on November 12, 2008.

WSDOT will construct five engineered log jam (ELJ) bank protection structures, support bars, and a rock groin between SR 410 and the White River from MP 41.4 to 42.0. In the same area, WSDOT will raise and widen an approximately 2,500-foot section of SR 410. Four of the ELJs and a portion of the support bars will be built below the river's Ordinary High Water Mark (OHWM), and the river will be temporarily diverted during in-water construction.

The project will impact the White River through 2,260 cubic yards of fill placed below the OHWM and 295 cubic yards of material excavated below the OHWM. To mitigate for these impacts, the ELJs incorporate fish enhancement features not currently present in the project area.



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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.

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
Joanne Wright, Department of Transportation

E-cc: ecyrefedpermit@ecy.wa.gov

IN THE MATTER OF GRANTING) ORDER #6336
A WATER QUALITY) Corps Reference No. NWS-2008-331-SOD
CERTIFICATION TO) Raise and widen SR 410 and construct bank
Washington State Department of) protection structures between SR 410 and the
Transportation) White River in King and Pierce 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: Ben Brown
P.O. Box 330310
Seattle, WA 98133-9710

On October 23, 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 12, 2008 Ecology issued a public notice for the project pursuant to the provisions Chapter 173-225 WAC.

WSDOT will construct five engineered log jam (ELJ) bank protection structures, support bars, and a rock groin between SR 410 and the White River from MP 41.4 to 42.0. In the same area, WSDOT will raise and widen an approximately 2,500-foot section of SR 410. Four ELJs and a portion of the support bars will be built below the river's Ordinary High Water Mark (OHWM), and the river will be temporarily diverted during in-water construction.

The project site is located in King and Pierce Counties, WRIA 10, Sections 8 and 9, Township 19N, Range 9E in WRIA 10, White River 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 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 hired contractors.
2. All required submittals 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. Notifications shall be made via phone at (425) 649-7181 or e-mail (preferred). All submittals and notifications shall reference Order No. 6336 and include the Applicant's name, project name, project location, the project contact and contact's phone number.
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. 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 Ecology's request for site inspections, monitoring, and data collection to ensure compliance.
7. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary protect water quality. Further, Ecology retains jurisdiction to modify this Order if additional impacts due to project construction or operation are identified.

8. The applicant shall ensure that all project engineers, workers, and contractors at the project site, with responsibility for directing work, have read and understand the relevant conditions of this Order and all referenced permits, approvals, and documents. Prior to commencing construction, the applicant shall provide Ecology a signed statement from each project engineer, worker, and contractor that he or she has read and understands this Order's conditions and the referenced permits, plans, documents and approvals. (See Attachment A for an example)
9. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state except as specifically provided for herein.
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. Notification Requirements

1. Notification shall be made via phone at (425) 649-7181 or e-mail (preferred) to Ecology's Federal Project Coordinator in accordance with condition A.2. for the following activities:
 - a. At least ten (10) days prior to the pre-construction meeting.
 - b. At least seven (7) days prior to the onset of any work on site.
 - c. At least seven (7) days prior to the onset of in-water activities.
 - d. At least seven (7) days from completion of the project.
 - e. Immediately following a violation of water quality standards or any condition of this Order.

C. Equipment and Staging

1. Unless Ecology so authorizes, no equipment shall enter, operate, be stored or parked within waters of the state, including wetlands and their buffers.
2. Equipment authorized to work in waters of the state shall be free of external petroleum-based products and the drive mechanisms (wheels, tires, tracks, etc.) shall be pressure-washed prior to entering state waters to remove accumulations of soil or other materials.
3. Staging areas¹, storage areas, and stockpile sites² will be placed a minimum of 50 feet and, where practicable, 200 feet from waters of the state, including wetlands. If any of these areas or sites must be placed within 50 feet of a water of the state, then the

¹ A staging area is a location on the project site where materials are brought from off-site or from a stockpile or storage site to be cued up for near term use.

² A stockpile site or storage area is a location where large amounts of material are stored for future use on a project.

Applicant shall notify Ecology's Federal Project Coordinator in accordance with condition B.1. for written approval prior to using those areas or sites.

4. To prevent contamination of surface waters, all construction equipment shall be serviced, fueled, and maintained on upland areas. All fueling areas shall have adequate spill containment. Equipment and vehicle fueling shall not occur within 50 feet of state waters including wetlands, unless authorized by Ecology.
5. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be maintained in accordance with the current WSDOT "Standard Specifications for Road, Bridge, and Municipal Construction," in the *Spill Prevention, Control, and Countermeasure Plan* section to prevent spills.
6. No petroleum products, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state
7. Tool and equipment cleaning solvents and chemicals shall not be discharged to the ground or waters of the state.
8. All construction debris temporarily stored on-site shall be placed in a manner that does not adversely affect waters of the state.

D. Construction

General Construction

1. Work in or near waters of the state shall be done in a manner that minimizes turbidity, erosion, and other water quality impacts.
2. The Applicant shall obtain and comply with the current National Pollutant Discharge Elimination System Construction Stormwater Permit (NPDES Permit) issued for this project.
3. Within the project limits³, 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.*

³ Project limits include mitigation sites, staging areas, borrow sources, and other sites developed or used to support project construction.

- a. If the project will be constructed in stages⁴ 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 D.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.
 - d. HVF shall be maintained until all work is completed for each project or each stage of a staged project.
4. All clearing limits, stockpile sites, staging areas, and vegetation 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.
 5. All disturbed stream bank areas shall be protected from temporary erosion using best management practices (BMPs) until stabilized by vegetation.

In-Water Construction

6. Riprap and other structural material shall be free of fines or other extraneous material.
7. All materials used for the temporary stream diversion shall be removed when the diversion work is complete, unless otherwise authorized by Ecology.
8. Prior to returning stream flow to the work area, all bank protection measures shall be in place.

E. Water Quality Criteria and Monitoring

1. Because this project is essential for public safety, Ecology has determined that a larger mixing zone is appropriate. In granting this mixing zone, Ecology finds that the Applicant's supporting information clearly indicates that the mixing zone does not have a reasonable potential to: 1) cause a loss of sensitive or important habitat; 2) substantially interfere with the existing or characteristic uses of the White River; 3) result in damage to the ecosystem; and 4) adversely affect public health.
 - a. A turbidity mixing zone is granted for a distance of 2,000 feet for the specified maximum durations of the activities listed below:

⁴ A stage is part of a project that has been separated into at least two distinct areas to be built during separate timeframes.

Activity	Time Period	Maximum Duration
Removal of the temporary isolation structure for ELJ #5.	Between July 1 and September 30 of the year this activity occurs	Up to 2 days
Installation and removal of the diversion structures	Between July 1 and September 30 of the year this activity occurs	Intermittent for up to 30 non-consecutive days

2. At least 20 days prior to commencing in-water work, the Applicant shall submit a Water Quality Monitoring and Protection Plan (WQMPP) to the Federal Project Coordinator for review and approval. **In-water work shall not begin until Ecology approves the WQMPP.**
 - a. At a minimum, the WQMPP shall include:
 - 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 sampling plan for turbidity.
 - 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 sampling event.
 - c. Ecology must approve, in writing, any changes or additions to the WQMPP.
 - d. Monitoring results shall be submitted monthly to the Ecology Federal Project Coordinator, per condition A.2.
 - e. Mitigation and/or additional monitoring may be required if the monitoring results indicate that the water quality standards have not been met.

F. Timing Requirements

1. This Order is valid until the Applicant meets all of its conditions.
2. In-water work is subject to a fishery closure window determined by the 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.

G. Emergency and 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. The Applicant shall have adequate and appropriate spill response materials on hand to respond to an emergency release of petroleum products or any other material into waters of the state.
3. Work that is out of compliance with the provisions of this Order, conditions causing distressed or dying fish, discharges of oil, fuel, or chemicals into state waters or onto land with a potential for entry into state waters, is prohibited. If such work, conditions, or discharges occur, 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 prevent further environmental damage.
 - c. 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, begin containment and cleanup efforts, which take precedence over normal work, and complete them as soon as possible. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
 - d. 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.
 - e. Notify the National Response Center at 1-800-424-8802 for spills to water.
 - f. Notify Ecology's Federal Project Coordinator within 24 hours of a spill event.
 - g. Submit a detailed written report to Ecology, in accordance with condition A.2., within five days that describes the nature of the event, the corrective action taken or planned, any preventative steps, results of samples taken, and other pertinent information.
4. 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.

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 send a copy of your appeal packet to:		
Katie Chamberlin Department of Ecology 3190 160 th 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://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 Dec 23, 2008 at Lacey, Washington.



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

Water Quality Certification Order No. 6336 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 State Route 410, White River Chronic Environmental Deficiency Project located in Pierce and King 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. 6336** 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