



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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November 5, 2008

REGISTERED MAIL

RB 252 946 885 US

Mr. Doug Greason
Delta Marine Industries
1608 South 96th St.
Seattle WA 98108-5115

RE: Water Quality Certification - Order #6105/Corps Public Notice #NWS-2008-0320-NO –
New dredging on 0.29 acres of existing dredged area surrounding the old marina to expand its
size in the amount of 14,200 cubic yards (cy) over a period of 10 years in the Delta Marine
Industries mooring area on the Duwamish River, King County, Washington.

Dear Mr. Greason:

The above-referenced public notice for proposed work in waters of the state has been reviewed in accordance with all pertinent rules and regulations. On behalf of the State of Washington, we certify that the work proposed in the public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This certification is subject to the conditions contained in the enclosed Order and may be appealed by following the procedures described in the Order.



If you have any questions concerning the content of this letter, please contact Helen Pressley at (360) 407-6076.

Sincerely,



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

cc: Amy Klein, Seattle ACOE
Jeff Layton, Layton and Sell, 12515 Willows Rd, Suite 205, Kirkland WA 98034
Mellon Trust of Washington – Disimone, 1801 S 93rd St. Seattle WA 98108
Duwamish Yacht Club, same address as Mellon Trust
Seattle City Light, P.O. Box 34023, Seattle WA 98104-4023

ecc: Rebekah Padgett, Ecology NWRO
ecc: Brad Helland, Ecology NWRO
ecc: Jessica Moore, Ecology
ecc: Laura Inouye, Ecology
ecc: Loree Randall

IN THE MATTER OF GRANTING A) ORDER # 6105
WATER QUALITY) Corps Reference No. NWS-2008-0320-NO
CERTIFICATION TO) New dredging in the amount of 14,200 cubic
Delta Marine Industries) yards (cy) over a period of 10 years on the west
in accordance with 33 U.S.C. 1341) bank of the Duwamish Waterway near 1608 S
(FWPCA § 401), RCW 90.48.120, RCW) 96th St, Seattle, King County, Washington.
90.48.260 and Chapter 173-201A WAC)

TO: Mr. Doug Greason
Delta Marine Industries
1608 South 96th St.
Seattle WA 98108-5115

On April 22, 2008 Delta Marine Industries 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 the Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on March 25, 2008.

The Applicant proposes to dredge 0.29 acres to an elevation of -15 feet (-17 feet with a 2 foot overdredge allowance). Under the current proposal a total of 14,200 cubic yards (cy) will be removed over 10 years during 4 separate dredging events (3,550 cy each event) in years 1, 4, 7, and 10. Each dredging cycle will require approximately 30 days to complete.

The sediment has been tested using the procedures specified by the Dredged Material Management Program (DMMP). The DMMP has determined that the material from all Dredged Material Management Units (DMMU's) is suitable for in-water disposal at the unconfined in-water Elliott Bay disposal site, unless further testing shows contamination has occurred.

The original suitability determination for this project was issued on October 19, 2007. Because newly available data indicated that there were elevated levels of dioxins close to the marina, a supplementary study on dioxins was requested. The results from the testing indicated that all material is suitable for in-water disposal. A supplemental suitability determination was issued for the sediment in the expansion area on Sept 9, 2008.

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:

1. For purposes of this Order, the term "Applicant" shall mean Delta Marine Industries 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 #6105 and Corps Reference # NWS-2008-0320-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 April 22, 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. 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 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 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.
10. 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.
11. Failure to comply with this 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).

C. Dredging and Disposal:

1. Dredging is to be done using a floating clamshell dredge discharging to a bottom-opening hopper barge. Use of any other type of dredge will require prior approval from Ecology.
2. All dredged material will be transported to the Elliott Bay in-water discharge site.
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.
6. A **Dredging Plan** is required and shall be submitted to Ecology for review and approval at least one week prior to the pre-dredge meeting convened at the Seattle Corps of Engineers office. The plan shall be sent to the Federal Permit Coordinator, per Condition A2.
7. Prior to each dredging cycle, the PSDDA agencies will determine whether additional sediment testing is required. If additional testing is required, no dredging or disposal shall be conducted until the material has been tested by the PSDDA agencies and a suitability determination has been issued. This area of the Duwamish Waterway ranks high in potential for recontamination and the recency determination extends to July, 2009.

D. 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 ten (10) years from date of issuance. Continuing this project beyond the 10 year term of this Order will require separate certifications every 10 years.

E. Notification Requirements:

1. The Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of each dredging cycle and within fourteen (14) days after completion of the dredging. Notification should be made using all the information required in Condition A2.

F. 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. During dredging, a containment boom and absorbent pads shall be placed around the perimeter of the work area to capture wood debris and other materials that may be released into the waters as a result of dredging activities. Oil absorbent materials shall be deployed if any floating oil sheen is observed. The boom shall remain in place until all oily material and floating debris have been collected and sheens dissipate. All accumulated debris shall be collected and disposed of upland at an approved disposal site.
 - f. Immediately notify Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events notify Ecology's 401/CZM Federal Project Manager at (360) 407-6076.
 - g. 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.

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.
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- 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
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>

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Delta Marine Industries
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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 11-5-08 at Lacey, Washington.



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

ATTACHMENT A

**Delta Marine Industries
Marina Expansion Dredging Project
Water Quality Certification Order #6105**

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

I have read and understand the conditions of Order #6105 Section 401 Water Quality Certification for the Delta Marine Industries expansion project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this order.

Signature

Date

Title