



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

August 18, 2008

REGISTERED MAIL
RB 252 945 704 US

City of Toledo
ATTN: Mr. Jerry Pratt, Mayor
130 North Second Street
Toledo, WA 98591

RE: Water Quality Certification Order **5752** for Corps Public Notice No. NWS-2007-2026-SO to construct a two lane boat launch, observation deck and associated park facilities on the Cowlitz River, within the City of Toledo, Lewis County, Washington

Dear Mr. Pratt:

On November 26, 2007, the City of Toledo, submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed the construction of a public boat ramp within the Cowlitz River. The project proposes to construct a new two-lane public boat launch and observation deck to provide fishing access to the Cowlitz River in this area. Associated construction on the project site includes the construction of restroom facilities, a gazebo with picnic table, paved path to observation deck and a parking area. Aquatic habitat will be enhanced at this location by removal of the existing debris used as riprap/bulkhead armor including large slabs of concrete, large diameter steel pipes and pieces of automobiles. Spawning gravel and large woody debris will be placed to enhance aquatic habitat. The U.S. Army Corps of Engineers issued a public notice on May 22, 2008 for the proposed project.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the 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 Lori Ochoa at (360) 407-6926. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Perry J Lund", written over a horizontal line.

Perry J Lund
Southwest Regional Office
Shorelands and Environmental Assistance Program

LO:th
Enclosure

cc: Olivia Romano, Corps of Engineers
Steve Bell, WDFW
Michelle Whitten, City Manager
Eric Noah, Gray & Osborne, Inc.
West Coast Oil
Richard Layman

IN THE MATTER OF GRANTING A)	ORDER # 5752
WATER QUALITY)	Corps Reference No. NWS-2007-2026-SO
CERTIFICATION TO)	Construction of a two lane boat launch,
City of Toledo)	observation deck and associated park facilities
in accordance with 33 U.S.C. 1341)	on the Cowlitz River, within the City of Toledo,
(FWPCA § 401), RCW 90.48.120, RCW)	Lewis County, Washington
90.48.260 and Chapter 173-201A WAC)	
)	
)	

TO: City of Toledo
ATTN: Mr. Jerry Pratt, Mayor
130 North Second Street
Toledo, WA 98591

On November 26, 2007, the City of Toledo submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice for a proposed water quality certification from Ecology was distributed by the U.S. Army Corps of Engineers for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on May 22, 2008.

The project proposes to construct a new two-lane public boat launch and observation deck to provide fishing access at approximately river mile 33.8 of the Cowlitz River. Associated construction on the project site includes the construction of restroom facilities, a gazebo with picnic table, paved path to observation deck and a parking area.

The boat launch will consist of two 12-foot lanes which will be about 130-feet from Front Street to the Cowlitz River. The observation deck will be 12 feet wide with 12 feet of overhang, of which approximately five feet will be cantilevered over the river. Work below the ordinary high water mark includes the construction of a temporary cofferdam, excavation of about 30 cubic yards of sediment, the placement of up to 25 cubic yards of poured-in-place concrete placement of Large Woody Debris (LWD), and placement of up to 50 cubic yards of spawning gravel.

Aquatic habitat at this location will be enhanced by the removal of the existing debris used as riprap/bulkhead armor including large slabs of concrete, large diameter steel pipes, and pieces of automobiles; and replacing it with spawning gravel and large woody debris.

The project is located on the Cowlitz River at 140 Front Street within the City of Toledo, Lewis County, Washington 98591; NE Section 18, Township 11 North, Range 1 West; WRIA 26, Cowlitz Watershed.

AUTHORITIES:

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, 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. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 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

A. General Conditions:

1. For purposes of this Order, the term "Applicant" shall mean the City of Toledo and its agents, assignees and contractors
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Southwest Regional Office, Attn: Federal Permit Coordinator, SEA Program, P.O. Box 47775, Olympia, WA 98504-7775. Any submittals shall reference Order No. **5752** and Corps Reference # **NWS-2007-2026-SO**.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on November 26, 2007. 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.

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 shall be rescinded if the U.S. Army Corps of Engineers does not issue a Section 404 permit
6. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
7. 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.
8. 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.
9. 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.
10. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand the 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.
11. 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.
12. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

B. Water Quality:

1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-200(1)(e)(i). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

C. Timing:

1. This Order is valid until all compliance requirements in this document have been met.
2. In-water work shall be subject to the timing limitations imposed by Washington Department of Fish and Wildlife's Hydraulic Project Approval (HPA) Number 111415-1, issued to the City of Toledo.

D. Notification Conditions:

1. The Applicant shall provide written notification (FAX, e-mail or mail) to Ecology's Southwest Regional Office Federal Project Coordinator in accordance with condition A.2 above for the following activities:
 - a. At least ten (10) days prior to a pre-construction meeting
 - b. At least ten (10) days prior to the onset of any work on site
 - c. At least ten (10) days prior to the onset of in-water work, including wetlands
 - d. Immediately following a violation of the state water quality standards or any condition of this Order.
 - e. Within fourteen (14) days after completion of construction.

NOTE: These notifications shall include the Applicant's name, project name, project location, the number of this Order, contact and contact's phone number.

E. Construction Conditions:

1. The project site shall be clearly marked/staked prior to construction. Clearing limits, travel corridors and stockpile sites shall be clearly marked. Equipment shall enter and operate only within the delineated clearing limits, corridors, and stockpile areas.
2. 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.
3. Periodic inspection and maintenance of all erosion control structures shall be conducted no less than every 7 days from the start of the project to site stabilization. Additional inspections shall be conducted prior to and after expected rainfall events to ensure erosion control measures are in good working condition. Any damaged structures shall be immediately repaired. If it is determined at the inspection that additional measures are needed to control stormwater and erosion, they shall be implemented immediately.

4. Work in or near waters of the state shall be done so that it minimizes turbidity, erosion, and other water quality impacts.
5. Uncured concrete and concrete by-products shall be completely sealed off and totally contained using sealed forms or other leak-proof containment systems, and not allowed to contaminate or enter surface waters of the Cowlitz River.
6. Fresh, uncured concrete in direct contact with water is toxic to aquatic life. All concrete shall be poured in the dry, or within confined waters not being dewatered, and shall be completely cured for seven days prior to coming into contact with waters of the state.
7. All construction debris shall be properly disposed of upland so that it cannot enter a waterway or wetland or cause water quality degradation to state waters.
8. During construction, the Applicant shall have a boat available on site at all times to retrieve any debris from the water.
9. The Applicant shall use tarps or other containment method when cutting or drilling over water to prevent sawdust and other materials from entering the water.
10. Wash water containing oils, grease, or other hazardous material 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.
11. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in order to prevent contamination to surface waters.
12. Turbid water generated from construction activities, including turbid dewatering water, shall not be discharged directly into waters of the state. Turbid water shall be pumped to an upland area to allow the turbid water to settle. The discharge from the upland areas shall meet water quality criteria at the point of discharge into surface waters and/or wetlands.
13. Dewatering water that is not turbid may be discharged directly to surface waters and/or wetlands provided that: a) waste water containing raw concrete or other harmful material has not been in contact with the water to be discharged and b) the water will meet all the water quality standards at the point of discharge.
14. A separate area shall be set aside, which does not have any possibility of draining to surface waters, to wash out concrete delivery trucks, pumping equipment, and tools.
15. All excess excavated material shall be disposed of above the 100-year floodplain and shall be contained so as to prevent its re-entry into waters of the state.

F. Emergency/Contingency Measures:

1. The applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials available on site.
2. Any work that is out of compliance with the provisions of this Order, or any discharge of oil, fuel, or chemicals into state waters, including wetlands, or onto land with a potential

for entry into state waters, is prohibited. If these occur, the 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. Immediately notify Ecology's Southwest Regional Spill Response Office at (360) 407-6300 of the nature of the problem and any actions taken to correct the problem and any proposed changes in operations to prevent further problems.
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 immediately notify Ecology's Southwest Regional Spill Response Office at 360 407-6300.

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. 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:

Lori Ochoa
Department of Ecology
Southwest Regional Office
P.O. Box 47775
Lacey, WA 98504-7775

*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 this 18 day of AUGUST, 2008 at Lacey, Washington.



Perry J Lund, Unit Supervisor
Shorelands and Environmental Assistance Program
Southwest Regional Office

Attachment # A

City of Toledo
Front Street Boat Launch
Water Quality Certification Order # **5752**

Statement of Understanding
Water Quality Certification Conditions

I, _____, state that, I will be involved as an agent or contractor for the City of Toledo in the construction of a new two-lane public boat launch, observation deck and associated park facilities on the Cowlitz River at 140 Front Street within the City of Toledo, Lewis County, Washington. I further state that I have read and understand the relevant conditions of the Washington Department of Ecology Water Quality Certification Order #**5752** and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

Phone

Company

