



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

June 2, 2006

REGISTERED MAIL
RB 252 973 926 US

Pierce County Water Programs
ATTN: Mr. David Renstrom
9850 64th Street West
University Place, WA 98467-1078

RE: Water Quality Certification Order 3230 and Coastal Zone Management consistency determination for Corps Public Notice No. 200500852 for the removal of 6000 feet of existing levee and construction of a new 6400 foot-long setback levee up to 950 feet landward of the existing levee. Additional levee repair/upgrade work will involve placement of 4900 cubic yards of riprap along the left and right banks of the Puyallup River at river mile 22, within the City of Orting, Pierce County, Washington

Dear Mr. Renstrom:

On June 10, 2005, Pierce County Water Programs 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 removal of 6000 feet of existing levee and construction of a new 6400 foot-long setback levee. The proposed alignment of the setback levee will allow the hydrologic connection of approximately 67 acres of isolated floodplain and wetlands to the Puyallup River. Additional levee repair/upgrade work will also be conducted on the left and right banks of the Puyallup River within the project area and will involve placement of up to 4,900 cubic yards of riprap. The U.S. Army Corps of Engineers issued a public notice on March 8, 2006, 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.

On June 2, 2006, Pierce County Water Programs, submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP).



Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the applicant's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the Federal Water Pollution Control Act.

This letter also serves as the State response to the Corps of Engineers' March 8, 2006 Public Notice.

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,

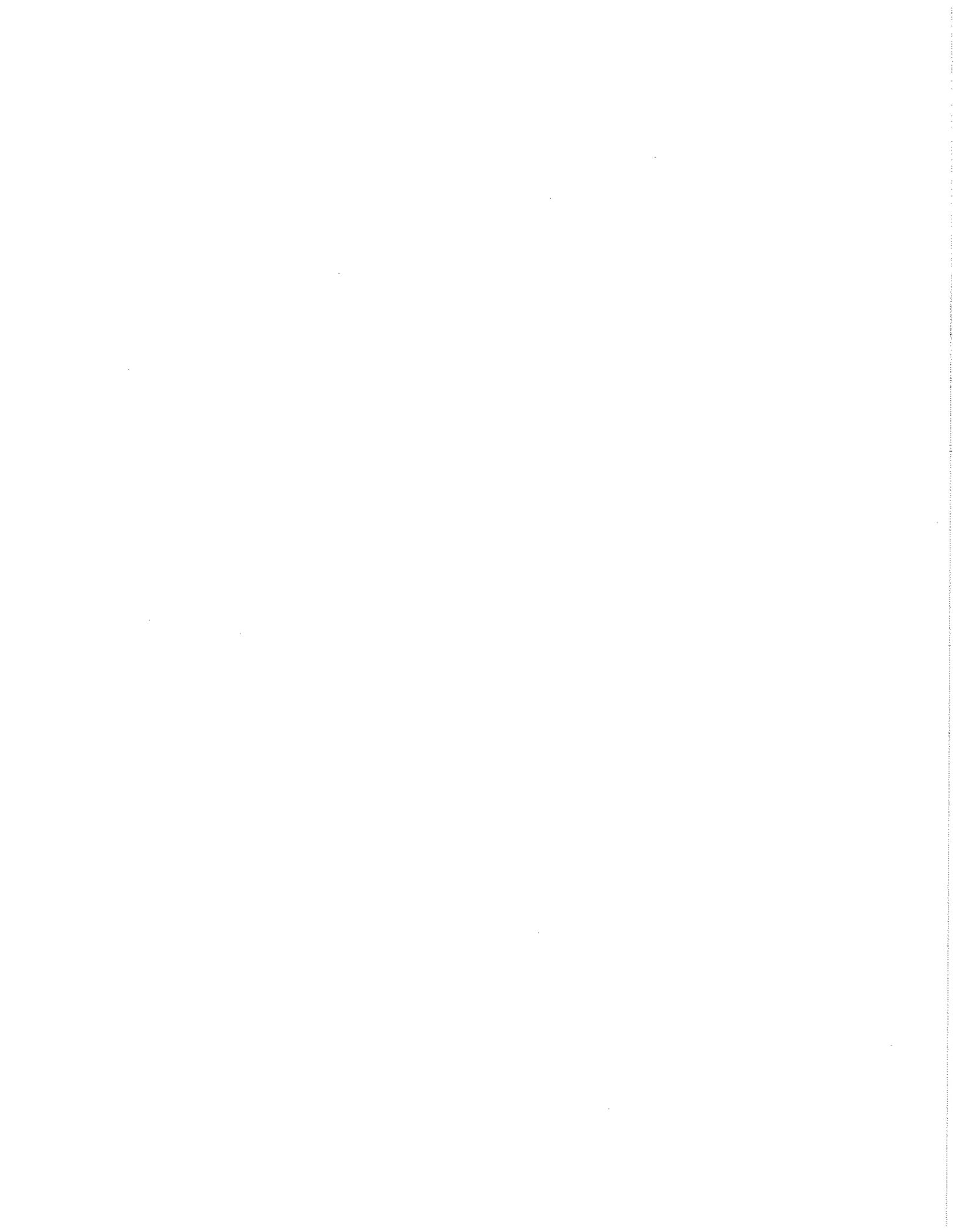
A handwritten signature in black ink, appearing to read "Perry J Lund", written over a horizontal line.

Perry J Lund
Shorelands and Environmental Assistance Program
Southwest Regional Office

LO:dn
Enclosure

cc: Ron Wilcox, U.S. Army Corps of Engineers
Travis Nelson, WDFW
Mark Bethune, City of Orting
Terry Belieu, Pierce County

e-cc: Penny Keys, HQ
Loree' Randall, HQ
Kim VanZwalenburg, SWRO/SEA
Gretchen Lux, SWRO/SEA
Kevin Farrell, SWRO/SEA
Lori Ochoa, SWRO/SEA



IN THE MATTER OF GRANTING A)	ORDER # 3230
WATER QUALITY)	Corps Reference No. 200500852
CERTIFICATION TO)	To Remove a 6,000 foot-long section of levee
Pierce County Water Programs)	and construct a new 6400 foot-long setback levee
in accordance with 33 U.S.C. 1341)	950 feet landward of the existing levee along the
(FWPCA § 401), RCW 90.48.120, RCW)	left and right banks of the Puyallup River at river
90.48.260 and Chapter 173-201A WAC)	mile 22, located in Pierce County, Washington
)	
)	

TO: Pierce County Water Programs
 ATTN: Mr. David Renstrom
 9850 64th Street West
 University Place, WA 98467-1078

On June 10, 2005, Peirce County Water Programs submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A 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 Chapter 173-225 WAC on March 8, 2006.

The proposed project entails the removal of a 6,000 foot-long section of levee by excavating up to 55,000 cubic yards of rock and gravel, constructing a new 6,400 foot-long setback levee to be located at its farthest point, up to 950 feet landward of the existing levee. Up to 6000 cubic yards of additional riprap will be required to complete the toe and face of the setback levee. Additional levee repair/upgrade work will also be conducted on the left and right banks of the Puyallup River within the project area and will involve placement of up to 4,900 cubic yards of riprap. The project is located along the left and right banks of the Puyallup River at river mile 22, within the City of Orting, Pierce County, Washington, Sections 31 and 32, Townships 18 and 19, Range 5, WRIA No. 10, Puyallup-White Watershed.

The setback levee will impact up to 2.67 acres of three wetlands. The project is considered to be self-mitigating. It will result in the reconnection of approximately 67 acres of presently isolated floodplain and wetland to the Puyallup River. This reconnection of the floodplain and wetland will permit natural channel migration processes to occur and result in the creation of off-channel and side-channel habitat for ESA listed independent populations of Chinook salmon and bull trout as well as other salmon species and wildlife.

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. §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 Pierce County Water Programs, 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, P.O. Box 47775, Olympia, WA 98504-7775. Any submittals shall reference Order No. 3230 and Corps No. 200500852.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on June 10, 2005. 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 Corps 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 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.
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 (\$10,000.00) per violation for each day of continuing noncompliance.

B. No Further Impairment of Existing Water Quality:

1. The Puyallup River (WRIA 10) is a Class A water of the state. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (173-201A WAC) or sediment quality standards (Chapter 173-204 WAC).

Water quality criteria contained in WAC 173-201A-030(2) and WAC 173-201A-040 shall apply to this project. This Order does not authorize temporary exceedances of the turbidity standard beyond the limits established in WAC 173-201A-110 (3).

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. Water Quality Monitoring and Reporting Conditions:

1. During and immediately after project construction, the Applicant or their contractor shall visually monitor for turbidity discharges at the point of compliance established in WAC 173-201A-110(3). If water quality exceedances are observed outside of the point of compliance, work shall cease immediately and the Applicant or the contractor shall assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further water quality turbidity exceedances. The Applicant or their contractor shall notify Ecology's Southwest Regional Office Federal Permit Coordinator at (360) 407-6926 of the exceedances.
2. If the results of the monitoring show that the water quality standards or project performance standards are not being met additional monitoring and mitigation may be required.
3. Any changes to the monitoring requirements must be approved in writing by Ecology.

D. Timing Requirements:

1. This Order is valid until all compliance requirements in this document have been met.
2. In-water work is subject to the fishery closure window determined by Washington State Department of Fish and Wildlife's (WDFW) Hydraulic Project Approval (HPA) Number 102160-1 issued for this project.

E. Notification Requirements:

1. The Applicant shall provide written notification (FAX, e-mail or mail) to Ecology's Southwest Regional Office Federal Permit Coordinator in writing at least fourteen (14) days prior to the start of work below the ordinary high water mark of Puget Sound.
2. The Applicant shall provide written notification to Ecology's Southwest Regional Office Federal Permit Coordinator in writing 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.

F. Construction Conditions:

1. The Applicant shall comply with all stormwater requirements within NPDES Permit Number WAR-007035 issued for this project.
2. The project shall be clearly marked/staked prior to construction. Clearing limits, travel corridors and stockpile sites shall be clearly marked. Sensitive areas and buffers that are to be protected from disturbance shall be marked so as to be clearly visible to equipment operators. Equipment shall enter and operate within the marked clearing limits corridors and stockpile areas.
3. All work in and near the water shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control best management practices suitable to prevent exceedances of state water quality standards shall be in place before starting clearing, filling and grading work and shall be maintained throughout construction.
4. 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 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.
5. All excess excavated material, debris, or deleterious material resulting from construction shall be properly disposed of in an appropriate location outside of sensitive areas and their buffers and shall be stabilized or contained so that it cannot enter waters of the state.
6. No materials shall be stockpiled within wetlands or streams.
7. Turbid water generated from construction activities, including turbid de-watering water, shall not be discharged directly to waters of the state, including wetlands. Turbid water shall be routed to an upland location to allow removal of fine sediment and other contaminants.
8. The Applicant shall establish a separate contained area for washing down equipment, which does not have any possibility of draining to surface waters and wetlands. No concrete wash water or wash water containing sediments, oils, grease, or other hazardous materials resulting from wash down of the work area, tools, and equipment including concrete delivery trucks or other equipment used for concrete work shall not be discharged into state waters.

9. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in a confined area in order to prevent containment to waters of the state. Fueling areas will be provided with adequate spill containment.
10. Appropriate BMP's shall be implemented to minimize track-out during construction.

G. 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, including wetlands, 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. Immediately notify Ecology's Southwest Regional Spill Response Office at (360) 407-6300 and the Washington State Department of Fish and Wildlife of the nature of the problem, 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.

I. Appeal Process:

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing

Your appeal must be filed with:

The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, Washington 98504-7608

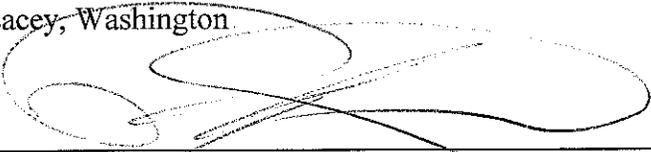
In addition, please send a copy of your appeal to:

Federal Permit Appeals Coordinator
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

For additional information. Environmental Hearings Office Website: <http://www.eho.wa.gov>

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 5 JUNE 2006 at Lacey, Washington.



Perry J Lund, Unit Supervisor
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

Attachment # A
Water Quality Certification, Order # 3230
Old Soldier's Home Levee Setback
Statement of Understanding

I, _____, state that, I will be involved as an agent or contractor for Pierce County Water Programs in the removal of a 6,000 foot-long section of levee, the construction of a new 6400 foot-long setback levee, and the additional levee repair/upgrade work along the left and right banks of the Puyallup River, a tributary of the Puget Sound located at River Mile 22 within the City of Orting, Pierce County, Washington. I further state that I have read and understand the relevant conditions of Washington Department of Ecology Water Quality Certification Order #3230 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

