



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

April 2, 2007

REGISTERED MAIL
RB 252 944 893 US

United States Coast Guard
ATTN: Tim Stott
915 Second Avenue, Room 2664
Seattle, WA 98174-1011

RE: Water Quality Certification Order No. **4043** and Coastal Zone Management consistency determination for Corps Public Notice No. **200600468** to construct a covered moorage on the existing pier and a breakwater off the Strait of Juan de Fuca in Neah Bay, Clallam County, Washington

Dear Mr. Stott:

On April 20, 2006, the U.S. Coast Guard, 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 Neah Bay Covered Moorings and Breakwater. The project proposes to install a roof and side walls on two existing boat moorage slips and construct a 335-foot long rock breakwater at the U.S. Coast Guard Station in Neah Bay. The U.S. Army Corps of Engineers issued a public notice on November 30, 2006, for the proposed project.

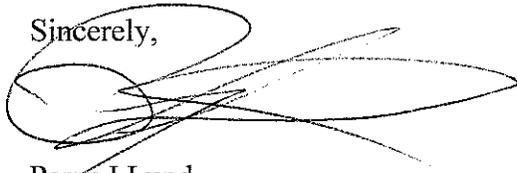
On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

On December 4, 2006, the National Park Service 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.



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", is written over a circular stamp or mark.

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

PJL:LO:dn
Enclosure

cc: Koko Ekendiz, Corps
Dave Molenaar, WDFW
Jim Woods, Makah Tribe

e-cc: Penny Keys – HQ
Loree' Randall – HQ
Jeff Stewart – SWRO/SEA
Deb Cornett – SWRO/WQ

IN THE MATTER OF GRANTING A) ORDER # 4043
WATER QUALITY) Corps Reference No. 200600468
CERTIFICATION TO) Construct Covered Moorings and Breakwater at
United States Coast Guard) the U.S. Coast Guard Station, in Neah Bay off of
ATTN: Tim Stott) the Strait of Juan de Fuca located in Clallam
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: United States Coast Guard
ATTN: Tim Stott
915 Second Avenue, Room 2664
Seattle, WA 98174-1011

On April 20, 2006, the United States Coast Guard 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 November 30, 2006.

The proposed project entails construction of a covered moorage on the existing pier and an associated 335-foot long pile and panel breakwater at the U.S. Coast Guard (USCG) Station in Neah Bay. The USCG buildings are within the Makah Reservation boundaries; however the proposed work is beyond the Makah Reservation boundaries.

The existing slips for the 47-foot vessels will be converted to covered moorings, enclosed on three sides. The roof and siding will be constructed of steel paneling and the walls will extend below the piers to an elevation of 4 feet below mean lower low water (MLLW) to provide protection to the boats from wave chop.

The breakwater is will be located north of the existing pier and will be constructed of battered vertical 14-inch steel "H" pile with pre-cast concrete panels installed between the flanges of the piles. The breakwater will be supported by a low rubble mound foundation which will also serve as a scour apron to minimize the length of pile exposed to the wave forces. Construction of the submerged rubble mound will involve placement of between 4300 and 6150 cubic yards of clean rock.

The project is located at the U.S. Coast Guard Station within the boundaries of the Makah Indian Reservation, Neah Bay, Clallam County, Washington, 98357; SE Section 11, Township 33 North, Range 15 West, WRIA No. 19, Lyre/Hoko 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. §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 the U.S. Coast Guard, 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. 4043 and Corps No. 200600468.

3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on April 20, 2006. 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 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. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-210(1)(e)(i). Furthermore, nothing in this certification shall absolve the Applicants from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.
2. Certification of this proposal does not authorize the Applicants 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-210 shall apply to this project, unless otherwise authorized by Ecology.

C. Water Quality Monitoring and Reporting Conditions:

1. The Applicant shall submit a Water Quality Monitoring and Protection Plan to the Federal Permit Coordinator for review and approval at least 20 days prior to beginning construction. Activities that are required to be monitored are not authorized to be conducted until approval is received.
 - a. The Plan shall include the name(s) and phone numbers of the inspector and the person responsible for onsite monitoring and reporting.
 - b. The Plan shall also include a description of the Best Management Practices (BMP's) that will be used to protect water quality for each discrete marine in-water construction activity. In-water construction activities include pile driving, placement of rock for rubble mound, and sheet pile installation.
 - c. The Plan shall identify at least two (2) sample locations for each in-water activity, one at background and one at the point of compliance as specified in WAC 173-201A-200(1)(e)(i). Prepare and submit a map as part of the Plan with numbered or named sampling locations associated with the in-water activity.
 - d. Timing of samples: Turbidity shall be visually assessed and recorded at a minimum of every four (4) hours during periods of active in-water work.
 - e. Reporting the results: Results of water quality monitoring shall be submitted to the Department of Ecology, Southwest Regional Office, Federal Permit Coordinator. If no exceedances are detected, the results shall be submitted once a week, 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 within 24 hours of occurrence.

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. Construction Conditions:

General

1. All work in or near water shall be done in a manner that minimizes turbidity, erosion, and other water quality impacts.
2. All debris, or deleterious material resulting from construction shall be properly contained and disposed of so that it cannot enter waters of the state.
3. No materials shall be stockpiled within the Ordinary High Water Mark (OHWM) of waters of the state.

Equipment Staging and Maintenance

4. Staging areas shall be located a minimum of 50 feet, and where practical, 200 feet from waters of the state.
5. The Applicant shall establish a separate contained area for washing down equipment, which does not have any possibility of draining to surface waters. 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.
6. 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.
7. If a barge will be used, the Applicant shall operate the barge(s) and tug in deep water so as to minimize near shore propeller wash impacts such as suspension of near shore sediments.

In-Water Work

8. During impact pile driving, a bubble curtain will be in place at all times to attenuate underwater vibrations.
9. Cast-in-place concrete/grout shall be completely sealed off and totally contained using sealed forms or other leak-proof containment systems, and not allowed to contaminate or enter waters of the state.
10. The Applicant shall have a boat available and on site during in-water activities to retrieve any debris entering the water.

E. Timing Requirements:

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

F. 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 Neah Bay.
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.

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.
 - 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.
 - f. Submit a detailed written report to Ecology's Federal Permit Coordinator within five (5) days that describes the nature of the event, corrective actions 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 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.

H. 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 2 APRIL 2007 at Lacey, Washington.



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

Attachment # A

Neah Bay Covered Moorings and Breakwater Project
Water Quality Certification Order # **4043**

Statement of Understanding
Water Quality Certification Conditions

I, _____, state that, I will be involved as an agent or contractor for the U.S. Coast Guard in the construction of the Covered Moorings and/or Breakwater at the U.S. Coast Guard Station located in Neah Bay off the Strait of Juan de Fuca, Clallam County, Washington. I further state that I have read and understand the relevant conditions of the Washington Department of Ecology Water Quality Certification Order #**4043** 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

