



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

February 19, 2008

REGISTERED MAIL
RB 252 946 673 US

Jeff Sawyer
Department of Transportation
Olympic Region
P.O. 47417
Olympia, WA 98504-7417

RE: Water Quality Certification Order # 5400 for Corps # NWP 23, NWS-2007-1904 for the Humptulips Bridge Scour Repair project in Grays Harbor, Washington.

Dear Mr. Sawyer:

On October 23, 2007, the Department of Ecology (Ecology) received the Department of Transportation's (WSDOT) Joint Aquatic Resource Permit Application (JARPA) for a 401 Water Quality Certification (401 Certification) for the proposed Humptulips Bridge Scour Repair project. WSDOT is proposing to construct 5 rock/wood barbs to protect the Humptulips Bridge from scour damage; infill to scallop shaped erosion areas on the river bank with rock and wood; and place large rock around bridge pier #4. This project will impact 0.02 acres of wetland and will be mitigated through onsite enhancement of the existing wetland. The U.S. Army Corps of Engineers issued a NWP 23, NWS-2007-1904 on November 20, 2007. Ecology issued a public notice on January 4, 2008.

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.

On February 14, 2008, Ecology received WSDOT's Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). Under Section 307(c) (3) of the federal Coastal Zone Management Act, Ecology concurs with WSDOT's determination that this work is consistent with Washington's CZMP. This concurrence is based on the applicant's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the federal Water Pollution Control Act.



*US 101 Humptulips Bridge Scour Repair and 401 Certification
Corps No. NWS-2007-1904 Order No. 5400
February 19, 2008
Page 2 of 2*

If you have any questions, please contact Penny Kelley, Federal Permit Coordinator, at 360-407-7298 or at pkel461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



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

BM:pk
Enclosure

cc: Jack Kennedy, Corps of Engineers
David Kloempken, Department of Fish & Wildlife
Dave Evans, Department of Transportation
Deborah Cornett, Ecology Water Quality

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF GRANTING A) ORDER # 5400
WATER QUALITY) Corps Reference No. #NWS-2007-1904
CERTIFICATION TO Washington) Construct 5 rock/wood barbs to protect the
Department of Transportation) Humptulips bridge from scour damage; infill to
in accordance with 33 U.S.C. 1341) scallop shaped erosion areas on the river bank
(FWPCA § 401), RCW 90.48.120, RCW) with rock and wood; place large rock around
90.48.260 and Chapter 173-201A WAC) bridge pier #4.

TO: Jeff Sawyer
Department of Transportation
Olympic Region
P.O. Box 47417
Olympia, WA 98504-7417

On October 23, 2007, Washington Department of Transportation (WSDOT) submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification). Ecology issued a public notice for the project on January 4, 2008.

WSDOT is proposing to construct 5 barb structures consisting of rock and large woody debris that will extend into the Humptulips River approximately 30 to 80 feet. The barbs are intended to protect the Humptulips Bridge from scour damage and prevent possible bridge failure. Additionally, rock and large woody debris will be used to infill two scallop-shaped erosion areas on the riverbank close to the bridge. Large rock secured around pier #4 will protect that pier from scour damage. WSDOT will construct a 750' road to access the river and work area underneath the bridge and they will remove part of this road after project completion.

The project site is on US 101 starting at Milepost 109.00 to Milepost 109.08, in Grays Harbor County, WA, Section 7, Township 20 North, Range 10 West, WRIA #22 (Lower Chehalis).

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.

A. Water Quality:

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) except as modified by this order. 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.

Short Term Water Quality Modification:

1. Consistent with WAC 173-201A-410, this Order authorizes a short term modification to the turbidity standards for the Humptulips River by granting a temporary mixing zone where turbidity criteria may be exceeded. The short term modification applies to placement of rock for constructing 5 rock barbs.
 - a. The temporary turbidity mixing zone is granted for a distance of 600 feet downstream from the activity causing the exceedance.
2. The short term modification is granted for the duration of the fish window listed in the most current Hydraulic Project Approval issued by the Department of Fish & Wildlife for this project.

Monitoring & Reporting

3. A water quality monitoring plan shall be developed and submitted to Ecology for review and approval 10 days prior to the start of barb construction. The water quality monitoring plan shall include:
 - a. The monitoring conditions as described in the U.S. Fish and Wildlife Service Biological Opinion, Log# 1-3-06-F-0502, dated August 30th of 2007 described on pages 65 and 66.
 - b. Turbidity sample events shall include a background sample prior to taking the first compliance sample for a given time period.

4. If turbidity levels measured at 600 feet exceed water quality standards, WSDOT shall continue monitoring as described in the Biological Opinion and implement contingency measures to bring turbidity levels back into compliance with water quality standards.
5. A monitoring report shall be submitted by December 31, 2008 to include, at a minimum, the following:
 - a. dates and times of in-water construction activities;
 - b. monitoring results; samples times, locations, and measured turbidities (in NTUs);
 - c. summary of in-water construction activities and measured turbidities associated with those activities;
 - d. summary of corrective actions take to reduce sediment and turbidity.

B. Notification Requirements:

1. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Headquarters, Attn: 401/CZM Federal Project Coordinator, P.O. Box 47600, Olympia, WA 98504-7600. Any submittals shall reference Order #5400 and Corps Reference # NWS-2007-1904.
2. Notification shall be made to Ecology's Federal Project Coordinator in accordance with condition B. 1 for the following activities:
 - a. At least 10 days prior to the pre-construction meeting
 - b. At least 10 days prior to the onset of any work on site
 - c. Immediately following a violation of the state water quality standards or any condition of this Order.

C. General Conditions:

1. For purposes of this Order, the term "Applicant" shall mean WSDOT and it's agents, assignees and contractors.
2. Work authorized by this Order is limited to the work described in the October 23, 2007 JARPA. 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.
3. Within 30 days of receiving 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.
4. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual 404 permit.
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 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.
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, contractors, and lead personnel with authority to direct work at the project site have read and understand this Order's conditions and all permits, approvals, and documents referenced herein. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each appropriate individual that he or she has read and understands 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.
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. 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.

D. Project Mitigation for Wetlands:

Wetland impacts shall be mitigated through enhancement of Wetland A as stated in the Wetland Review Report, SR 101 Humptulips River Bridge Scour Repair, dated July 2006.

E. Construction:

1. WSDOT shall submit a copy of the Temporary Erosion and Sediment Control plan for review 20 days prior to the start of construction per condition C.2 above.
2. The access road shall be clearly marked/staked prior to construction with orange construction fencing in order to be clearly visible to equipment operators. Equipment shall enter and operate only within the delineated work area.

3. Upon removal of the temporary sections of access road, the Applicant shall protect disturbed areas from erosion using mulch or its equivalent within seven days of the project completion. If erosion control seed mixes are used in these areas, they shall consist of native species unless otherwise approved by modification to this Order.
4. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
5. All construction debris, excess sediment, and other solid waste material shall be properly managed and disposed of in an upland disposal site approved by the appropriate regulatory authority.
6. Turbid de-watering water associated with in-water work shall not be discharged directly to waters of the state. Turbid de-watering water shall be routed to an upland area for on-site settling per the Construction Stormwater Permit for this project or off-site disposal. The discharge from the upland areas shall meet the water quality criteria at the point of discharge.
7. Clean de-watering water associated with in-water work that has been tested and confirmed to meet water quality standards may be discharged directly to waters of the state. The discharge outfall method shall be designed and operated so as not to cause erosion or scour in the stream channel, banks, or vegetation.

Equipment & Maintenance

8. Staging areas will be located a minimum of 50 feet and, where practical, 200 feet, from waters of the state, including wetlands. If a staging area must be located within 50 feet of a water of the state, then the Applicant shall provide a written explanation and obtain approval from Ecology's Federal Project Coordinator before placement of the staging area in the set back area.
9. Equipment used for this project shall be free of external petroleum-based products while used around the waters of the state, including wetlands. Accumulation of soils or debris shall be removed from the drive mechanisms (wheels, tires, tracks, etc.) and the undercarriage of equipment prior to its use around waters of the state, including wetlands.
10. 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.
11. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall not be discharged into state waters. The applicant shall set up a designated area for washing down equipment.
12. No cleaning solvents or chemicals used for tool or equipment cleaning may be discharged to the ground or to waters of the state.

Barb Construction

13. Wetlands temporarily impacted from the construction of barbs 4 and 5 shall be protected from erosion using mulch or its equivalent for the duration of the project and within seven days of the project completion. If erosion control seed mixes are used in these areas, they shall consist of native species unless otherwise approved by modification to this Order.
14. Removal of existing wetland and riparian vegetation shall be limited to the amount necessary for barb construction and infilling the scalloped areas on the riverbank.
15. When constructing the barb structures and infilling the scalloped areas on the riverbank, rock shall be placed into position and not dumped into the river or the existing wetland.

F. Emergency/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. Any work that is out of compliance with the provisions of this Order, or producing conditions that are causing distressed or dying fish, or causing any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters is prohibited. If such work occurs, the Applicant shall comply with WSDOT's Instructional Letter 4055.00 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/or prevent further environmental damage;
 - c. In the event of finding distressed or dying fish, 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 receives further instructions from Ecology. 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. This work shall take 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 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. Immediately notify the National Response Center at 1-800-424-8802 for spills to water.
3. 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 Southwest Region Regional Spill Response Office at 360-407-6300.

G. Timing Requirement

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

H. Appeal Process

You have a right to appeal this Order. To appeal this Order 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:		Deliver your appeal in person to:
The Pollution Control Hearings Board		The Pollution Control Hearings Board
PO Box 40903	OR	4224 – 6th Ave SE Rowe Six, Bldg 2
Olympia, WA 98504-0903		Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:		Deliver your appeal in person to:
The Department of Ecology		The Department of Ecology
Appeals Coordinator	OR	Appeals Coordinator
P.O. Box 47608		300 Desmond Dr SE
Olympia, WA 98504-7608		Lacey, WA 98503

3. And send a copy of your appeal to:

Department of Ecology Headquarters
Attn: Penny Kelley
P.O. Box 47600
Olympia, WA 98504-7600

Order #5400, Corps Reference #NWS-2007-1904
US 101 Humptulips Bridge Scour
February 19, 2008
Page 8 of 8

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 Feb 19, 2008 at Olympia, Washington.



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

ATTACHMENT A

**Washington Department of Transportation
US 101 Humptulips Bridge Scour
Water Quality Certification Order #5400**

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

I, _____, state that, I will be involved as a WSDOT employee or an agent or contractor for Washington State Department of Transportation in the US 101 Humptulips Bridge Scour project in Grays Harbor WA. I further state that I have read and understand the relevant conditions of Washington Department of Ecology **Water Quality Certification Order #5400** and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

Company