



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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REGISTERED MAIL

RB 252 946 894 US

December 2, 2008

Mr. Robert Brenner
Port of Tacoma
PO Box 1837
Tacoma WA 98401

RE: Water Quality Certification - Order #6236/Corps Public Notice NWS-2008-01128-WRD - Maintenance dredging in the amount of 5,600 cy in front of the Washington United Terminals pier in Blair Waterway at Commencement Bay, Tacoma, Pierce County, Washington.

Dear Mr. Brenner:

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.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Brenden McFarland".

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

cc: Seattle Corps – Olivia Romano
US Oil and Roofing,
Concrete Technology,
Tacoma Screw Products



IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO the Port of Tacoma in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC) ORDER #6236) Corps Reference No. NWS-2008-01128-WRD) Maintenance dredging in the amount of 5,600) cubic yards (cy) of sediment from an area in) front of the Washington United Terminal Pier in) Blair Waterway, Commencement Bay, at) Tacoma, Pierce County, Washington
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TO: Mr. Robert Brenner
Port of Tacoma
P.O. Box 1837
Tacoma WA 98401

On August 26, 2008 the Port of Tacoma submitted a Joint Aquatic Resource 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 for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on October 17, 2008.

The proposed project involves the maintenance dredging of up to 5,600 cy of sediment from an area 40 feet wide by 270 feet long in front of the Washington United Terminal pier. All dredging will occur between -40 feet and -51 feet Mean Lower Low Water (MLLW) line. The sediment will be removed using a barge-mounted clamshell dredge. The area will be dredged to about -51 feet MLLW, the depth of prior dredge authorization in Blair waterway, with a 2 foot allowable overdredge.

The purpose of the dredging is to provide adequate berthing depths in front of the Washington United Terminal pier so that vessels do not ground during low tides.

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 the Port of Tacoma 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: Federal Project Coordinator, P.O. Box 47600, Olympia, WA 98504. Any submittals shall reference Order No. 6236 and Corps No. NWS-2008-01128-WRD.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on August 26, 2008. 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 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 at 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 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 stating 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. 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.
12. This Order shall be rescinded if the US Army Corps of Engineers does not issue an individual Section 404 and Section 10 permit.

B. 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)(D).

C. Dredging and Disposal:

1. All dredging will be done using a barge-mounted clamshell dredge or excavator. Use of any other type of machinery will require prior approval from Ecology.
2. All material dredged will be transported to an approved in-stream disposal 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. All debris shall be disposed of in an approved upland area.
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 sediment shall be disposed of at the open-water disposal site in Commencement Bay.
6. The project must be dredged before the most current sediment evaluation's recency date found in the suitability determination issued by the Dredged Material Management Program (DMMP). The most recent sediment evaluation covers the project until July 3, 2014. After that date, the applicant must either request an extension for the sediment evaluation or conduct another sediment evaluation through the DMMP.
7. A **Dredging Plan** shall be developed and implemented. The Applicant shall submit the Plan for Ecology's review per Condition #A2 at least seven (7) days prior to the start of dredging each dredging season.

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 five (5) years from date of issuance. Continuing this project beyond the five year term of this Order will require separate certifications every five 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 construction and within 14 days after completion of construction or dredging at the project site. Notification, referencing Corps Reference #NWS-2008-01128-WRD, Order #6236 can take place by telephone to (360) 407-6076 or, fax to (360) 407-6902, e-mail at hpre461@ecy.wa.gov or in writing.

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, 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 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (360) 407-6076.

- f. 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. 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 using the above phone numbers.
4. 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.

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:

SEA Program Headquarters
Attn: Helen Pressley
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

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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 Dec 2, 2008 at Lacey, Washington.



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

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Dated Dec 2, 2008 at Lacey, Washington.



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

ATTACHMENT A

**Port of Tacoma
Maintenance Dredging
Water Quality Certification Order #6236**

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

I have read and understand the conditions of Order #6236 Section 401 Water Quality Certification for the **Port of Tacoma Maintenance Dredging Project**. I have also read and understand all permits, plans, documents, and approvals associated with the **Port of Tacoma Maintenance Dredging Project** referenced in this order.

Signature

Date

Title

Company

Please make copies for all appropriate employees.