



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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CERTIFIED MAIL

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July 17, 2009

Ms. Nancy Gleason
Army Corps of Engineers
Seattle District
P.O. Box 3755
Seattle WA 98124-3755

RE: Order # 6881 - Corps Reference No. CENWS-OD-TS-NS-29
Maintenance dredging of up to 1,000 cubic yards of sand and gravel from the federal navigation channel and Coast Guard moorage slip at Boat Haven Marina in Port Townsend Bay at Port Townsend, Jefferson County, Washington

Dear Ms. Gleason:

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. This certification is subject to the conditions contained in the enclosed Order and may be appealed by following the procedures described in the Order.

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

Sincerely,

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

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



Ms. Nancy Gleason
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cc: John Hicks, Seattle Corps
Port of Port Townsend

ecc: Loree' Randall, Ecology
Helen Pressley, Ecology
Rick Mraz, Ecology
Laura Inouye, Ecology
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A) ORDER # 6881
WATER QUALITY) Corps Reference No. CENWS-OD-TS-NS-29
CERTIFICATION TO) Maintenance dredging of up to 800 cubic yards
Army Corps of Engineers) of sand and gravel from the federal navigation
in accordance with 33 U.S.C. 1341) channel in Port Townsend Bay at Port
(FWPCA § 401), RCW 90.48.120, RCW) Townsend, Jefferson County, Washington
90.48.260 and Chapter 173-201A WAC)

TO: Ms. Nancy Gleason
Army Corps of Engineers
Seattle District
P.O. Box 3755
Seattle WA 98124-3755

On February 20, 2009, the Army Corps of Engineers submitted a Joint Aquatic Resources 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 by the Army Corps of Engineers and Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on February 19, 2009.

The proposed work consists of mechanical (clamshell) maintenance dredging removal of approximately 800 cubic yards (cy) of clean sediments from the Port Townsend Harbor navigation channel. Placement of the resulting material will be in the existing Port Townsend open water dispersive disposal site, which has been approved by the Dredged Material Management agencies.

The purpose of the maintenance dredging project is to provide safe ingress and egress for boats using the federal navigation channel at all tidal elevations.

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 Army Corps of Engineers 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: 401/CZM Federal Permit Coordinator, P.O. Box 47600 Olympia, WA 98504-7600. Any submittals shall reference Order #6881 and Corps Reference # CENWS-OD-TS-NS-29.
3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resource Permit Application (JARPA) received by Ecology on February 20, 2009. The Applicant will be out of compliance with this Order and must submit an updated JARPA 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. 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.
6. The Applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.

7. 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. Furthermore, 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.
8. 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.
9. 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.
10. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

B. Water Quality Conditions:

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).
2. A water quality monitoring plan is required for this project. Dredging and disposal activities are required to be monitored. The water quality monitoring plan shall be sent to Ecology for review and approval at least 14 days prior to the start of any in-water work.

Water Quality Monitoring Plan – This plan shall include at a minimum the following information:

- a. Name and contact information of the person(s) or firm responsible for monitoring;
- b. Map of approximate sample locations including background and point of compliance. For this project the point of compliance is a radius of 150 feet from the activity causing the turbidity.
- c. Parameter to be monitored: turbidity;
- d. Sample method(s);
- e. Frequency, and
- f. Steps to be taken if monitoring results indicate an exceedance has occurred.

C. Dredging and Disposal:

1. All dredging is to be done using a clamshell dredge. Use of any other type of dredge will require prior approval from Ecology.
2. All dredged material will be transported to the Port Townsend open water dispersive disposal site or used beneficially.
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.
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 material shall not be stockpiled on a temporary or permanent basis below the ordinary high water line.
6. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.
7. This certificate does not allow any widening of the channel.
8. Prior to each dredging cycle, the Applicant shall contact the PSDDA agencies to determine whether additional sediment testing is required. If additional testing is required, no dredging or disposal shall be conducted until the material has been tested and a suitability determination has been issued. This area ranks moderate in potential for contamination and the recency determination extends until July 10, 2013. Contact the DMMO for a possible extension of up to 2 years.
9. A pre-dredge meeting is required to be convened at the Seattle Corps of Engineers office prior to the start of dredging. A **Dredging Plan** is required and shall be made available for review and approval 2 weeks prior to the pre-construction meeting. A copy of the plan shall be sent to the 401/CZM Federal Permit Coordinator at the address shown in Condition A2.

D. Timing Requirements:

1. All in-water work shall be completed by the work window identified in the most current Biological Opinion (BO) issued for this project. Any project change that requires a new or revised BO should also be sent to Ecology for review.

2. This Order shall remain in effect for a period of 10 years from date of issuance. Continuing this project beyond the 10 year term of this Order will require separate certifications every 10 years.

E. Notification Requirements:

1. The Applicant shall provide notice to Ecology's 401/CZM Federal Permit Coordinator at least 7 days prior to the start of dredging and within 14 days after completion of dredging at the project site. Notification should be made using all the information required in Condition A2.

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, 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 Ecology's 401/CZM Federal Permit Coordinator 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. 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 using the above phone numbers.

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

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3. And send a copy of your appeal to:

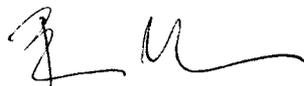
Department of Ecology
Shorelands and Environmental Assistance Program
Attn: Helen Pressley
P.O. Box 47600
Olympia, WA 98504

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 July 17, 2009 at Lacey, Washington.



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

ATTACHMENT A

**U.S. Army Corps of Engineers
Port Townsend Dredging Project
Water Quality Certification Order #6881**

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

I have read and understand the conditions of Order #6881 Section 401 Water Quality Certification for the U.S. Army Corps of Engineers Port Townsend dredging project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this order.

Signature

Date

Title