



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

December 28, 2004

**REGISTERED MAIL**  
**RR 359 893 363 US**

William Chadek  
4435 - 156th Place SE  
Bellevue WA 98006

Dear Mr. Chadek:

RE: **Order # 1839**  
**U.S. Army Corps of Engineers #200100894**  
Water Quality Certification for wetland fill of 1.81 acres in Auburn, King County,  
Washington.

The request for certification for proposed work in wetlands associated with Mill Creek, King County, has been reviewed. On behalf of the State of Washington, we certify that the proposed work, as conditioned by the enclosed Order, will comply 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 letter also serves as the State response to the Corps of Engineers.

This certification is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Alice Kelly at (425) 649-7145. Written comments can be sent to her at the Department of Ecology, 3190 160th Avenue SE, Bellevue, WA 98008, or at e-mail [akel461@ecy.wa.gov](mailto:akel461@ecy.wa.gov). The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in cursive script that reads "Jeannie Summerhays".

Jeannie Summerhays  
Section Manager  
Shorelands and Environmental Assistance Program

JS:ak:rc  
Enclosure

cc: Jonathan Smith, Corps of Engineers  
Jeffery S. Jones



**IN THE MATTER OF GRANTING A  
WATER QUALITY CERTIFICATION  
TO**

**William Chadek**

in accordance with 33 U.S.C. 1341  
FWPCA § 401, RCW 90.48.260, RCW  
90.48.120 and Chapter 173-201A WAC

) **ORDER # 1839**  
) **Corps Reference # 200100894**  
) Placement of fill in 1.81 acres of wetlands  
) associated with Mill Creek for commercial  
) development; Auburn, King County,  
) Washington.  
)

TO: William Chadek  
4435 - 156th Place SE  
Bellevue, WA 98006

On December 29, 2003, a public notice for a proposed water quality certification from the State of Washington was distributed for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA §401). The project consists of placing fill in 1.81 acres of wetlands to build a 49,000-square-foot warehouse/office and a parking lot. A stormwater pond will be built next to the warehouse.

For the purposes of this Order, the term "Applicant" means William Chadek and his agents, assigns, and contractors.

**AUTHORITIES:**

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, and RCW 90.48.260, Ecology has investigated 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. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 303, 306 and 307);
2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; 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.

**CONDITIONS OF ORDER # 1839 AND WATER QUALITY CERTIFICATION:**

In view of the foregoing and in accordance with 33 U.S.C. 1341, 90.48.260 RCW and Chapter 173-201A WAC, water quality certification is granted to William Chadek subject to the following conditions:

**A. No Impairment of Water Quality:**

- A1. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards 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.

**B. Project Mitigation:**

- B1. Impacts to aquatic resources shall be mitigated through measures described in the following documents, except as modified by this Order:

- *Conceptual Mitigation Plan for the Chadek Commercial Building* by J.S. Jones and Associates, February 20, 2003, as expanded and amended by *Chadek "B" Street Property Wetland Mitigation and Enhancement Plan* by J.S. Jones and Associates, revised December 23, 2004.
- Joint Aquatic Resources Permit Application Form, June 1, 2004.

- B2. In addition to conditions in the above-referenced documents, the following requirements shall be conditions of this Order:

- **Timing:** Construction and installation of compensatory mitigation must occur before or at the same time as project impacts on wetlands.
- **As-Built Report:** An as-built report documenting the final design of the mitigation area must be prepared when site construction and planting are completed. The report shall include the following:
  - Vicinity map showing site access.
  - Final site topography.
  - Drawings that clearly identify in plan view the locations and square footage of target USFWS (Cowardin) habitat classes (e.g., PSS, PFO) and the boundaries of all mitigation areas, including buffers.
  - The installed planting scheme showing densities, sizes, and approximate locations of plant communities (this may include several typical planting schemes), as well as plant sources and the time of planting.
  - Photographs of the area taken from permanent reference points.

- Locations of photopoints, transects, and sampling sites.
- A description of any changes to the mitigation plan that occurred during construction.

A copy of the as-built report shall be sent to Richard Robohm, wetland specialist at Ecology, 3190 - 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452, within 60 days of completing construction, and in no case later than December 31, 2005.

- Deed Restriction: Permanent protection of the wetland restoration area shall be recorded on the appropriate property deed. The deed shall clearly indicate that the wetland restoration area is "waters of the state." Documentation that this requirement has been fulfilled, including copies of permanent restrictive easements, shall be provided to Richard Robohm at Ecology at the same time as the as-built report.
- Field Supervision: Plant installation and clearing and grading for wetland creation shall be field-supervised by a qualified wetland consultant to ensure that plants are appropriately placed, that the mature cottonwoods on site are protected wherever possible, and that proper elevations are achieved.
- Monitoring: Detailed monitoring protocols for vegetation and hydrology shall be developed and submitted for review and approval with the as-built report. Monitoring shall take place over a period of ten years, with monitoring performed in years 1, 2, 3, 5, 7 and 10. **Copies of all monitoring reports shall be submitted to Ecology at 3190 - 160th Avenue SE, Bellevue, WA 98008-5452.** Reports shall display the Order Number 1839.
- Performance Standards: Standards shall include the minimum square footage of each USFWS habitat class to be achieved by the end of the monitoring period. The standard for cover of native woody species shall be as shown on the December 23, 2004, revision of the wetland mitigation plan, plus 50 percent in Year 7 and 60 percent in Year 10. The standard for invasive non-native species shall be maximum cover of less than 5 percent for all non-native woody species (Himalayan and evergreen blackberry, Scots broom, etc.) combined, and less than 15 percent for reed canarygrass throughout the monitoring period.
- Maintenance: The Applicant is responsible for maintenance of the wetland mitigation site. Maintenance may include wicking or spot spraying of reed canarygrass by a licensed applicator using an approved herbicide under a permit to be obtained from Ecology.

**C. Stormwater Management:**

- C1. The Applicant shall comply with *Volume II: Construction Stormwater Pollution Prevention of the Stormwater Management Manual for Western Washington*, August 2001. A Stormwater Pollution Prevention Plan shall be prepared and kept available on the site before earthwork starts.

**D. Construction:**

- D1. Work in or near waters of the state shall be done so as to minimize turbidity, erosion, sedimentation, and other water quality impacts. Before the start of clearing, filling, and grading work at the impact sites, Best Management Practices (BMPs) for construction stormwater, sediment, and erosion control shall be in place. These BMPs (perimeter erosion-control silt fences, sediment ponds, etc.) must be suitable to prevent exceedances of state water quality standards.
- D2. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- D3. The Applicant shall provide notice to Ecology's Richard Robohm at least 3 days before starting to place fill in wetlands or other waters of the state, and within 30 days after completion of construction at the project site and mitigation site. Notification can take place by e-mail to [riro461@ecy.wa.gov](mailto:riro461@ecy.wa.gov), telephone to (425) 649-4447, fax to (425) 649-7098, or by U.S. mail.

**E. Emergency/Contingency Measures:**

- E1. If for any reason the Applicant is unable to comply with any of the permit terms and conditions, the Applicant shall:
- Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
  - Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (425) 649-7000, and within 24 hours to Ecology's Richard Robohm at (425) 649-4447.
  - Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Applicant of responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

E2. 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. No refueling of equipment shall occur over, or within 50 feet of creeks or wetlands.

**F. General Conditions:**

F1. This certification does not exempt the Applicant from and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

F2. The Applicant will be out of compliance with this certification if project construction or operation is inconsistent with the project description in the Public Notice for certification, or as otherwise approved by Ecology. Additional mitigation measures may be required through other local, state, or federal requirements.

F3. The Applicant will be out of compliance with this certification and must reapply with an updated application if five years elapse between the date of the issuance of this certification and the beginning of construction and/or discharge for which the federal license or permit is being sought.

F4. The Applicant will be out of compliance with this certification and must reapply with an updated application if the information contained in the Public Notice is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency or otherwise, that is not defined in the Public Notice, or has not been approved by Ecology, is not authorized by this Order. All future actions shall be coordinated with Ecology for approval before implementing such action.

F5. 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 foremen, and state and local government inspectors.

F6. 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, or to ensure that conditions of this Order are being met.

F7. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are needed 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

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are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.

- F8. Liability: 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.

**Appeal Process:**

Any person aggrieved by this Order may obtain review thereof by appeal, within thirty (30) days of receipt of this Order, to the Washington Pollution Control Hearings Board, P.O. Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Shorelands and Environmental Assistance Program, P.O. Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated 12/28/04 at Bellevue, Washington.

  
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Jeannie Summerhays, Section Manager  
Shorelands and Environmental Assistance Program  
Department of Ecology  
State of Washington

