



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

June 24, 2005

Whatcom County Public Works
River & Flood Division
ATTN: Paul Pittman
322 North Commercial Street - Suite 120
Bellingham, WA 98225

REGISTERED MAIL
RR 359 893 598 US

Dear Mr. Pittman:

RE: **Order #2453**
U.S. Army Corps Reference No. 200500250
Water Quality Certification/Coastal Zone Consistency Determination for Whatcom County
Public Works, Swift Creek Dredging Project, Swift Creek, Whatcom County, Washington

The request for certification for proposed work in and adjacent to Swift Creek 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.

Pursuant to 16 U.S.C. 1456 et. seq. (Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended), Ecology concurs with the applicant's determination that this work will be consistent with the approved Washington State Coastal Zone Management Program. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the Coastal Zone Management Program, including Section 401 of the Federal Water Pollution Control Act.

This certification is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Rebekah Padgett at (425) 649-7129. Written comments can be sent to Rebekah at the Department of Ecology, 3190 160th Avenue SE, Bellevue, WA 98008, or at rp461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Jeannie Summerhays, Section Manager
Shorelands and Environmental Assistance Program

Enclosure

JS:RP:rc

cc: Randel Perry, U.S. Army Corps of Engineers
Gary Voerman, U.S. Environmental Protection Agency
Richard Clark, U.S. Environmental Protection Agency

Barry Wenger, Ecology
Penny Keys, Ecology



IN THE MATTER OF GRANTING A)	ORDER # 2453
WATER QUALITY)	U.S. Army Corps Reference # 200500250
CERTIFICATION TO)	Excavate 150,000 cubic yards of material, bank
Whatcom County Public Works)	armoring, and bank stabilization; near Everson,
in accordance with 33 U.S.C. 1341)	Whatcom County, Washington.
FWPCA § 401, RCW 90.48.260 and)	
Chapter 173-201A WAC)	

TO: Whatcom County Public Works
River and Flood Division
ATTN: Paul Pittman
322 N. Commercial Street, Suite 120
Bellingham, WA 98225

On March 31, 2005, a public notice for a proposed water quality certification from the State of Washington was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA §401). The proposed project entails excavation of approximately 150,000 cubic yards of deposited sediment from the Swift Creek channel and placement of approximately 5,420 cubic yards of material (riprap, gabion baskets, or wood revetments) along 10,500 linear feet of creek bank. The bank stabilization is part of the sediment trap design (two sediment traps were permitted under Ecology Order #1734, Corps Reference #200400254, and the work has not been completed due to additional sedimentation). The proposed project would restore conditions in order that the sediment basins can be constructed and function as designed. Stockpiled material is to be stored on site. Swift Creek is a tributary to the Sumas River, which flows north to the Fraser River in Canada.

The excessive sediment in Swift Creek is caused by a large, complex landslide in the upper watershed on Sumas Mountain. Approximately 150,000 cubic yards of material move into the creek system annually. The exposed slide material contains naturally-occurring elevated levels of asbestos, nickel, manganese, cobalt, chromium, and magnesium. These chemicals are present in amounts toxic enough to prevent vegetation from growing on the slide material, and Swift Creek has no resident fish. The movement of sediment downstream in Swift Creek contributes to water quality problems in the Sumas River.

AUTHORITIES:

For purposes of this Order, the term “Applicant” means Whatcom County Public Works and its agents, assigns, and contractors.

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 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 # 2453 AND WATER QUALITY CERTIFICATION:

In view of the foregoing and in accordance with 33 U.S.C. 1341, RCW 90.48.120, RCW 90.48.260, and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the following conditions:

A. No Impairment of Water Quality:

- A1. Certification of this proposal does not authorize 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 Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.
- A2. Swift Creek is classified as Class A and the criteria of that class apply. Turbidity in Class A waters shall not exceed more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU, or cause greater than 5 NTU increase over background when the background turbidity is 50 NTU or less.

B. Material Management Plan:

- B1. The Applicant shall work with the U.S. Environmental Protection Agency and the Washington State Department of Health to formulate a plan for long-term management of the dredged material.
- B2. The dredged material from Swift Creek shall be placed in an upland location so that it does not re-enter state waters, including but not limited to streams, wetlands, lakes, rivers, estuaries, or marine waters, or any other waters of the state.

C. Construction:

- C1. Construction Stormwater and Erosion Control: Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (*e.g.*, detention areas, silt fences, filter fences, etc.), shall be in place before starting excavation and grading.
- C2. During excavation and construction at the project site, Applicant shall take all necessary measures to minimize the alteration or disturbance of existing vegetation.
- C3. 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.
- C4. Applicant shall provide notice to Ecology's Rebekah Padgett at least 3 days prior to the start of construction. Notification can take place by e-mail to rp461@ecy.wa.gov, telephone to (425) 649-7129, fax to (425) 649-7098, or in writing. Notification shall also be provided to Ecology's Barry Wenger at the Bellingham Field Office at least 3 days prior to the start of construction. Notification can take place by e-mail to bw461@ecy.wa.gov, telephone to (360) 738-6245, fax to (360) 738-6253, or in writing to 1204 Railroad Ave. Suite 200, Bellingham, WA 98225.

D. Emergency/Contingency Measures:

- D1. In the event Applicant is unable to comply with any of the permit terms and conditions due to any cause, 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 Rebekah Padgett at (425) 649-7129.
 - Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/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 Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

D2. 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.

E. General Conditions:

E1. This certification does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

E2. Applicant will be out of compliance with this certification if the project is constructed and/or operated in a manner not consistent with the project description contained 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.

E3. 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.

E4. 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 prior to implementation of such action.

E5. This Order is valid until all compliance requirements in this document have been met.

E6. 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. To avoid violations or non-compliance with this Order, Applicant shall ensure that project managers, construction superintendents, and other responsible parties have read and understand relevant aspects of this Order, the NPDES permit if applicable, and any subsequent revision or Ecology-approved plans.

E7. Applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.

E8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines 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 the public interest.

- E9. 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 Order #2453 may obtain review thereof by appeal. Pursuant to Chapter 43.21B RCW, a person can appeal this Order to the Pollution Control Hearings Board within 30 days of the date of receipt of this Order. Any such appeal must be sent 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, Attn: Loree' Randall, PO 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 June 24, 2005, at Bellevue, Washington.



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