



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

July 29, 2005

REGISTERED MAIL
RR 359 893 686 US

Port of Seattle
ATTN: Ann Kenny
PO Box 1209
Seattle, WA 98111

Dear Ms. Kenny:

RE: Order # 2620
U.S. Army Corps Reference No. 200500541
Water Quality Certification/Coastal Zone Consistency Determination for Port of Seattle,
Maintenance of Terminal 91, Pier 91, Berths C & D, Elliott Bay, King County, Washington

The request for certification for proposed work in and adjacent to Elliott Bay 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,

Geoff Tallent
Interim Section Manager
Shorelands and Environmental Assistance Program

GT:rc

Enclosure

cc: Jessica Winkler, U.S. Army Corps of Engineers
Laura Praye, Washington Department of Fish and Wildlife
Penny Keys, Ecology
Loree Randall, Ecology



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

Port of Seattle

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

))) **ORDER #2620**

))) **Corps Reference No. 200500541**

) Maintenance of Terminal 91, Pier 91, Berths C and D; includes: replacement of an existing apron; placement of a new sheet pile bulkhead; replacement of 2,680 creosote piling with 600 concrete piling, 239 steel piling, and 120 ACZA-treated timber fender piles; placement of up to 1,360 cubic yards of riprap, 2,710 cubic yards of rat rock, and 2,640 cubic yards of fish rock; replacement of existing floats; S. 26, T. 25N, R. 3E; Elliott Bay, Seattle, King County, Washington.

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On June 15, 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 for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA §401). The proposed project consists of replacing the existing timber pier and bulkheads at Berths C and D with a new 88-foot-wide concrete apron. Reconstruction activities include: removal of an existing 75' x 960' timber apron and replacement with an 88' x 960' concrete apron; placement of a new sheet pile bulkhead landward of the existing timber and concrete bulkheads; replacement of 2,680 creosote piling with 600 (18") concrete piling, 225 (20") steel piling, 14 (12") steel pipe piles, and 120 ACZA-treated timber fender piles; placement of up to 1,360 cubic yards of riprap, 2,710 cubic yards of rat rock, and 2,640 cubic yards of fish rock between +8 feet and -20 Mean Lower Low Water to stabilize the slope and improve habitat; and replacement of existing floats with two 9' x 46' floats, ramps, and 10 (12") steel piles. Approximately 550 timber piling will be extracted. Approximately 2,130 piles will be cut off below the mudline to retain the seismic stability of the slope. Additional riprap and rat rock slope covering will be placed over these areas. The purpose of the project is to minimize long-term maintenance and strengthen the existing pier structures to retain functionality of the terminal and to accommodate possible future uses. The upgrade will allow for more breakbulk/project cargoes to be handled and accommodation of more general moorage for various types of cargo vessels.

For purposes of this Order, the term "Applicant" shall mean Port of Seattle and its agents and contractors.

Work authorized by this Order is limited to the work described in the complete Joint Aquatic Resource Permit Application (JARPA) received by Ecology on June 14, 2005.

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 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 # 2620 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. Elliott Bay is classified as Class A waters of the state. 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.
- A2. WAC 173-201A-110(3) allows a 150-foot mixing zone for temporary exceedances of the turbidity standards during and immediately after necessary in-water construction activities that result in the disturbance of in-place sediments. This certification does not authorize a temporary turbidity mixing zone greater than that allowed by WAC 173-201A-110(3). The Applicant shall fully apply all known, available, and reasonable methods of prevention, control, and treatment (AKART). Within the temporary turbidity mixing zone, the Class A standard for turbidity is waived. All other applicable water quality standards shall remain in effect within the temporary turbidity mixing zone and all other water quality standards are to be met outside of the authorized mixing zone.

A3. The waiver of specified standards within the temporary turbidity mixing zone is intended for brief periods of time (such as a few hours or a day) and is not an authorization to exceed those standards for the entire duration of construction. In no case shall turbidity exceedances cause degradation of water quality that significantly interferes with or becomes injurious to characteristic water uses, including fisheries habitat, or causes long-term harm.

A4. Water Quality Sampling Protocol:

- a) Sampling for turbidity is required during in-water construction activity. In-water construction activities include pile driving and pile removal or extraction.
- b) Timing of samples: Turbidity samples shall be collected and analyzed a minimum of every two hours throughout the first day of in-water construction activity. Subsequent sampling is dependent upon monitoring results, but shall be a minimum of once per day for the first week of in-water activity, reducing to once per week if no exceedances are detected. Sampling shall increase if exceedances are detected, and shall be reported to Ecology as outlined in A4.e below.
- c) A background sample shall be collected before construction begins each day that sampling is required.
- d) Location of samples: Samples shall be collected at the point of compliance 150 feet radially from the construction or activity. Additional sampling 100 feet from the point of activity will provide a margin of safety to respond to potential exceedances.
- e) Reporting of results: Results of water quality monitoring shall be submitted to Rebekah Padgett, Department of Ecology, 3190 – 160th Avenue SE, Bellevue, WA, 98008-5452, fax 425-649-7098, or e-mail rpad461@ecy.wa.gov.

If no exceedances are detected, results shall be submitted once a week.

If exceedances are detected:

- i) Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem. Additional samples shall be taken to verify that an exceedance has occurred.
- ii) Notify Ecology of the failure to comply. Notification shall be provided within 24 hours to Ecology's Rebekah Padgett at (425) 649-7129.

- iii) Submit a detailed written report to Ecology within 5 days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of samples taken, and any other pertinent information.

B. Construction:

- B1. 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 shall be in place before starting construction.
- B2. Best Management Practices described in the following documents shall be implemented:
- “Pier 91 Apron Reconstruction Berths C and D Biological Evaluation – Supplemental Information,” dated December 30, 2002, pages 15-16.
 - “Port of Seattle, Addendum Number 1, Terminal 91 – Pier 91, Berths C & D Demolition and Apron Reconstruction, WP 101012: Division 2 – Site Work, Section 02220 – Site Demolition, Paragraph 3.02, Demolition of Wharf Structure, Subpart 3.02, C (1 through 6),” dated July 21, 2005.
- B3. A floating containment boom shall be deployed and maintained which encloses the work site.
- B4. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- B5. 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.
- B6. Clean Fill Criteria: Applicant shall ensure that fill (clean sand) placed for the proposed project does not contain toxic materials in toxic amounts.
- B7. Wet concrete shall be prevented from entering waters of the state. Forms for any concrete structure shall be constructed to prevent leaching of wet concrete. Impervious materials shall be placed over any exposed concrete not lined with the forms that will come in contact with state waters. Forms and impervious materials shall remain in place until the concrete is cured.

C. Notification:

- C1. Applicant shall provide notice to Ecology's Rebekah Padgett at least 3 days prior to the start of construction, and within 14 days after completion of construction at the project site. Notification can take place by e-mail to rpad461@ecy.wa.gov, telephone to (425) 649-7129, fax to (425) 649-7098, or in writing.

D. Emergency/Contingency Measures:

- D1. In the event the Applicant is unable to comply with any of the permit terms and conditions due to any cause, 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 Rebekah Padgett at (425) 649-7129.
- Submit a detailed written report to Ecology within 5 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 the 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.

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. The 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. This Order shall be valid during construction activities and is valid until the U.S. Army Corps of Engineers' 404 permit expires.
- E4. The Applicant must reapply with an updated application if 5 years elapse between the date of the issuance of this certification and the beginning of construction for which the federal license or permit is being sought.
- E5. 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 prior to implementation of such action.
- 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, the Applicant shall ensure that project managers, construction superintendents, and other responsible parties have read and understand relevant aspects of this Order
- E7. 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.
- 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 #2620 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, PO 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 July 29, 2005 at Bellevue, Washington.



Geoff Tallent, Interim Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington