



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

January 19, 2005

REGISTERED MAIL
RR 359 893 417 US

Port of Everett
ATTN: John Klekotka
PO Box 538
Everett, WA 98206

Dear Mr. Klekotka:

RE: Order # 1895
U.S. Army Corps of Engineers # **200301269**
Water Quality Certification and Coastal Zone Management Consistency Determination for
construction of a rail/barge transfer facility, Snohomish County, Washington.

The request for certification for proposed work in Puget Sound 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.

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 Alice Kelly at (425) 649-7145. Written comments can be sent to her at the Department of Ecology, 3190 – 160th Ave. SE, Bellevue, WA 98008. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Jeannie Summerhays
Section Manager
Shorelands and Environmental Assistance Program

JS:ak:rc
Enclosure

cc: Jim Green, Corps
Brian Williams, WDFW

Mike Wray, Berger/Abam
Tiffany Yelton, Ecology



IN THE MATTER OF GRANTING A)	ORDER # 1895
WATER QUALITY)	Corps Reference No. 200301269
CERTIFICATION TO)	Construction of a rail / barge transfer facility
Port of Everett)	comprised of 80' X 250' rail trestle; 104' X 350'
in accordance with 33 U.S.C. 1341)	long main pier, two parallel 12' X 250' finger
FWPCA § 401, RCW 90.48.120, RCW)	piers; 430 concrete support piles and 120 steel or
90.48.260 and Chapter 173-201A WAC)	concrete fender piles; Everett, Washington.

TO: Port of Everett
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On April 29, 2004, 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 construction a rail barge transfer facility with the following components: an 80' X 250' overwater trestle, a 104' X 350' main pier, and two parallel 12' X 250' finger piers. The structure will require 430 concrete piles for support. An additional 120 steel or concrete piles will be placed as fender piles. The facility will be located in Possession Sound, City of Everett, Snohomish County, Washington.

Mitigation will consist of beach restoration which will require placement of 11,800 cubic yards of clean sand/cobble/gravel fill. This will restore approximately 1,100 linear feet of upper beach habitat between elevations +5 and +15 Mean Lower Low Water (MLLW) to allow increased forage fish spawning. Native riparian vegetation will be planted on approximately 0.2 acre of backshore.

Mitigation for eelgrass impacts consists of transplantation of eelgrass planting units from a donor site in the vicinity of the new facility prior to construction. To mitigate for shading and construction impacts to approximately 700 square feet of eelgrass, transplantation will occur in an approximately 1100 square feet area.

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

AUTHORITIES:

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, RCW 90.48.120, and RCW 90.48.260, the Department of Ecology (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 # 1895 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 the Applicant subject to the following conditions:

A. No Impairment of Water Quality:

- A1. Possession Sound 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.

Possession Sound has been identified on the current 303(d) list as exceeding state water quality standards for numerous parameters. This proposed project shall not result in further exceedances of the standards for the listed parameters.

B. Project Mitigation:

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

Riparian Planting Plan for the Port of Everett Rail/Barge Transfer Facility Beach Restoration Project, Everett, Washington, Prepared by Pentec Environmental, dated December 22, 2004.

Revised Draft Appendix F, Conservation Measures and Monitoring Plan, Port of Everett Rail/Barge Transfer Facility, Everett, Washington. Prepared for BERGER/ABAM Engineers, Inc. and the Port of Everett, dated March 3, 2004.

The following additional conditions apply:

- a) "As-built" survey and the monitoring reports (pp. 25-26 of Appendix F) for the restoration site shall be submitted to Ecology by December 31 of the year the survey or monitoring took place. Reports shall be sent to: Federal Permit Coordinator, 3190 160th Ave SE, Bellevue, WA 98008, with Order No. 1895 displayed.
 - b) Ecology shall be a member of the "adaptive management team" to review monitoring results and determine adjustments to mitigation sites, if necessary.
 - c) Physical monitoring of the restored beach site shall be conducted at Years 0, 1, 2, 3, 5, 7 and 10. Monitoring shall occur in Years 7 and 10 even if a "significant storm" as referred to on Page 26 of the Conservation Measures and Monitoring Plan (CMMP) does not occur.
 - d) Ecology may issue additional orders if a determination is made that further actions are necessary to implement adequate mitigation for project impacts. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified, or if additional conditions are necessary to further protect the public interest.
- B2. Mitigation is required to be constructed during the same year as construction occurs.
- B3. Appropriate sound attenuation devices shall be deployed when impact hammers are used to drive steel piles.
- 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, filter fences, etc.), shall be in place before starting construction of the pier and filling, and grading at the restoration site, and shall also comply with all requirements of the applicable NPDES Permit.

- C2. 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.
- C3. The applicant shall comply with all water quality-related conditions included in the WDFW Hydraulic Project Approval (HPA).
- C4. 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.
- C5. Port of Everett shall provide notice to Ecology's Alice Kelly at least 3 days prior to the start of construction. Notification can take place by e-mail to akel461@ecy.wa.gov, telephone to (425) 649-7145, fax to (425) 649-7098, or in writing.
- C6. Clean Fill Criteria: The Applicant shall ensure that fill (sand, gravel, cobble) placed for the proposed project does not contain toxic materials in toxic amounts.

D. Operation:

- D1. The facility shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.

E. Emergency/Contingency Measures:

- E1. 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 Alice Kelly at (425) 649-7145.
 - 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 the Applicant from 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.

F. General Conditions:

- F1. This certification does not exempt 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 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.
- F3. This Order is valid until all compliance requirements in this document have been met.
- F4. 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.
- F5. 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.
- F6. 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, the NPDES permit, and any subsequent revision or Ecology-approved plans.

- F7. 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.
- F8. 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.
- F9. 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 #1895 may obtain review thereof by appeal. Pursuant to ch. 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 1/19/05 at Bellevue, Washington.



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