



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

April 29, 2005

REGISTERED MAIL
RR 359 893 553 US

Snohomish County Public Works
ATTN: Crilly Ritz
2930 Wetmore Avenue
Everett, WA 98201

Dear Mr. Ritz:

RE: Order # 2291
U.S. Army Corps Reference No. 200300913
Water Quality Certification/Coastal Zone Consistency Determination for Snohomish County
Public Works, Swede Heaven Road Bank Stabilization, North Fork Stillaguamish River,
Snohomish County, Washington

The request for certification for proposed work in and adjacent to the North Fork Stillaguamish River 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:rc

cc: Susan Glenn, U.S. Army Corps of Engineers

William Lider (electronic copy only)



IN THE MATTER OF GRANTING A) ORDER # 2291
WATER QUALITY) Corps Reference No. 200300913
CERTIFICATION TO) Installation of 3,060 cubic yards of rock
Snohomish County Public Works) consisting of riprap and five rock groins for bank
in accordance with 33 U.S.C. 1341) stabilization along 350 feet of North Fork
FWPCA § 401, RCW 90.48.120, RCW) Stillaguamish River; located in Section 7, T.
90.48.260 and Chapter 173-201A WAC) 32N., R. 9E., Snohomish County, Washington.

TO: Snohomish County Public Works
ATTN: Crilly Ritz
2930 Wetmore Avenue
Everett, WA 98201

On April 8, 2005, the U.S. Army Corps of Engineers issued a Nationwide Permit 13 (Bank Stabilization) to Snohomish County Public Works for placement of riprap and installation of five rock groins as bank stabilization along 350 lineal feet of the North Fork Stillaguamish River near Swede Heaven Road. During the review of the Joint Aquatic Resource Permits Application (JARPA), the Department of Ecology (Ecology) determined that an individual Section 401 water quality certification would be required for this project. On March 4, 2005, Ecology distributed a public notice for a proposed water quality certification from the State of Washington pursuant to the provisions of 33 U.S.C. 1341 (FWPCA §401). One comment was received. A revised public notice was distributed on March 24, 2005. The public comment period ended April 6, 2005. No comments were received after distribution of the second notice.

The proposed project consists of five rock groins placed partially into the riverbank, horizontal fabric-encased layers of soil and willow whip plantings installed on the re-constructed riverbank, a re-contoured upper riverbank with fabric matting and willow plantings, and installation of woody debris into the groins and in the inter-groin areas to enhance in-stream fish habitat. Mitigation includes acquisition of approximately 2.4 acres of riparian habitat as a native growth protection area, removal of 5,800 feet of impervious surface, and re-vegetation work.

AUTHORITIES:

For purposes of this Order, the term “Applicant” shall mean Snohomish 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 # 2291 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. North Fork Stillaguamish River, WRIA #5, is classified as Class AA waters of the state. 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.

North Fork Stillaguamish River has been identified on the current 303(d) list as exceeding state water quality standards for temperature and fecal coliform. This proposed project shall not result in further exceedances of the standards.

B. Short Term Modification to Water Quality Standards:

- B1. Construction activities waterward of the ordinary high water mark may cause water quality effects that will exceed the state water quality criteria specified in Chapter 173-201A WAC. Per WAC 173-201A-110, Ecology may grant a modification to the standards to allow for exceedances of the criteria on a short-term basis when necessary to accommodate essential activities. The North Fork Stillaguamish River is classified as Class AA and the criteria of that class apply except as specifically modified by this Order. Turbidity in Class AA waters shall not exceed 5 NTU over background when the

background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

Mixing zones (or zones of disturbance) can be authorized to allow for temporary exceedances of certain water quality standards in state waters immediately adjacent to a permitted project, after all known, available, and reasonable methods of prevention, control and treatment have been implemented. For this project, a mixing zone of 600 feet from the downstream edge of the in-water activities is considered reasonably sufficient to allow for temporary water quality exceedances. Within the mixing zone, the Class AA standard for turbidity is waived. All other applicable water quality standards shall remain in effect within the mixing zone and all other water quality standards are to be met outside of the authorized mixing zone.

- B2. This modification shall remain in effect for the entire duration of time necessary to complete the work. However the waiver of specified standards within the 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 does the waiver authorize degradation of water quality that significantly interferes with or becomes injurious to characteristic water uses, including fisheries habitat, or causes long-term harm to the N.F. Stillaguamish River.
- B3. Water Quality Sampling and Monitoring: **A water quality monitoring plan for in-water construction activities and a temporary erosion and sediment control (TESC) plan shall be submitted to the Department of Ecology, Federal Permit Coordinator, for review by June 15, 2005.** Ecology may require changes and modifications to the plans.

The water quality monitoring plan shall include the following minimum specifications:

- Name and phone number of person responsible for monitoring;
- Map of sample locations (background, 300 feet and 600 feet downstream). If exceedances are detected at 600 feet, additional sampling shall occur further downstream.
- Parameter(s) to be monitored; turbidity and dissolved oxygen
- Sample method;
- Sample frequency: the Applicant shall conduct water quality monitoring on a daily basis before commencing in-water work to determine background; and every three hours during installation and removal of the cofferdam structure. Sampling may be reduced during work behind the cofferdam if no exceedances are detected.

- B4. Reporting: Results of water quality sampling, as determined by the water quality monitoring plan, shall be forwarded to Department of Ecology on a weekly basis to Rebekah Padgett at (425) 649-7129, e-mail rp461@ecy.wa.gov or fax (425) 649-7098.
- B5. If water quality standards are exceeded at any time during construction, 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 within 24 hours to Ecology's Rebekah Padgett at (425) 649-7129.
 - Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (425) 649-7000.
 - 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. The report shall be submitted to: Rebekah Padgett, Department of Ecology, 3190 – 160th Avenue SE, Bellevue, WA 98008, or fax (425) 649-7098.
- B6. Temporary Erosion and Sediment Control (TESC) Plan:
- Name and phone number of person responsible for implementing plan;
 - Best management practices (BMPs) anticipated to be implemented;
 - Frequency of BMP inspections; and
 - Contingency plan in the event of adverse weather condition or other foreseeable undesirable conditions.
- C. Stormwater Management:**
- C1. Applicant shall comply with the Department of Ecology's Stormwater Management Manual for Western Washington, August 2001, or equivalent.
- D. Construction:**
- D1. 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 clearing and construction at the impact site.
- D2. 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.
- D3. 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.
- D4. Clean Fill Criteria: Applicant shall ensure that fill placed for the proposed project does not contain toxic materials in toxic amounts.
- D5. The applicant shall implement all specifications for erosion and sediment control specified in the TESC and all contract documents. Adjustments to planned erosion and sediment control may be necessary to successfully control off-site movement of materials.
- D6. Temporary impacts to vegetation shall be limited to the amount necessary for construction, access, and stockpiling/staging areas. These disturbed areas shall be replanted with native vegetation within the first appropriate planting season after construction is completed and maintained or replanted as necessary to ensure 80% survival after three years.
- D7. Periodic inspection and maintenance of all erosion control structures shall be conducted no less than every 7 days from the start of the project to site stabilization. Additional inspections shall be conducted prior to and after expected rainfall events to ensure erosion control measures are in working conditions. Any damaged structures shall be immediately repaired. If it is determined at the inspection that additional measures are needed to control stormwater and erosion, they shall be implemented immediately.
- D8. A contingency plan shall be developed detailing actions to be made in the event of adverse weather conditions or other foreseeable undesirable conditions.
- D9. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in order to prevent contamination to surface waters. All fueling areas will be provided with adequate spill containment. During fueling and servicing of cranes, BMPs shall be in place to contain any spill of petroleum products.
- D10. Turbid water generated from construction activities and/or removed from the work area shall not be discharged directly to waters of the state and shall be routed to an upland location above the ordinary high water line to allow removal of fine sediment and other contaminants.

E. Emergency/Contingency Measures:

E1. 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.

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. Notification:

F1. Applicant shall provide notice to Ecology's Rebekah Padgett at least three (3) days prior to the start of construction. 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.

G. General Conditions:

G1. This certification does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

G2. 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.

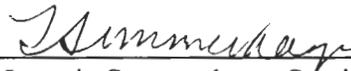
- G3. Applicant will be out of compliance with this certification and must reapply with an updated application if the information contained in the Public Notice is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency or otherwise, that is not defined 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.
- G4. This Order is valid for a period of not more than five years after the signature dated on the last page of this Order. The Applicant shall reapply with an updated application for certification if five years elapse between the date of the issuance of this Order and the beginning of construction and/or discharge for which the federal license or permit is being sought.
- G5. 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.
- G6. Applicant shall provide access to the project site and mitigation site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.
- G7. 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.
- G8. 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 # 2291 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 4/29/05 at Bellevue, Washington.



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