



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

July 8, 2008

REGISTERED MAIL
RB 670 357 294 US

U.S. Army Corps of Engineers, Seattle District
PO Box 3755
Seattle, WA 98124

**RE: Water Quality Certification Order #5709 for U.S. Army Corps of Engineers
Reference #PL-08-09, Dykstra Levee Rehabilitation, Green River, King
County, Washington**

Dear Sir or Madam:

On May 23, 2008, the U.S. Army Corps of Engineers (Corps) submitted a request to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act (CWA) for the proposed Dykstra Levee Rehabilitation project. The Corps issued a joint Notice of Preparation & Clean Water Act Public Notice on May 21, 2008, for the proposed project.

The project includes repair/replacement of 600 feet of damaged levee along the lower Green River.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the request for 401 Certification and the May 21, 2008, public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

In order to facilitate a good working relationship for future levee projects, the Corps shall work with Ecology and other Washington state resource agencies to develop a management plan for the levees. The plan should at a minimum include: 1) Future levee repair mitigation guidance, 2) mitigation monitoring, and 3) criteria and options for setting back levees. The plan should also evaluate alternatives for design of levee rehabilitation such as multiple planting benches, riparian planting, and launchable toes.



U.S. Army Corps of Engineers, Seattle District
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If you have any questions, please contact Rebekah Padgett at (425) 649-7129 or email at rpad461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,


For

Geoff Tallent
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:rrp:cja
Enclosure

cc: Andrea Cummins, U.S. Army Corps of Engineers
Larry Fisher, Washington Department of Fish and Wildlife
David Brock, Washington Department of Fish and Wildlife
Phyllis Meyers, NOAA Fisheries
Jeff Dixon, City of Auburn
Martin Fox, Muckleshoot Indian Tribe
Karen Walter, Muckleshoot Indian Tribe
Dennis Clark, WRIA 9 Salmon Habitat Recovery Team

e-cc: David Pater – NWRO
Raman Iyer – NWRO
Loree' Randall – HQ

IN THE MATTER OF GRANTING A) ORDER #5709
WATER QUALITY) Corps Reference No. PL-08-09
CERTIFICATION TO) Dykstra Levee Rehabilitation; Green River,
U.S. Army Corps of Engineers,) Auburn, King County, Washington.
Seattle District)
 in accordance with 33 U.S.C. 1341)
 (FWPCA § 401), RCW 90.48.120, RCW)
 90.48.260 and Chapter 173-201A WAC)

TO: U.S. Army Corps of Engineers, Seattle District
 PO Box 3755
 Seattle, WA 98124

On May 23, 2008, the U.S. Army Corps of Engineers (Corps) submitted a request to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on May 21, 2008.

The project includes:

- Repair approximately 600 linear feet of the levee.
- Grade existing bank to a 2H:1V slope.
- Plant the slope with two willow/dogwood lifts along the length of the levee repair.
- Place large woody debris along a total of approximately 200 feet of the levee.
- Place additional large woody debris at the edge of the mid-channel island across from the levee repair site.

The project is located adjacent to Riverview Drive NE, along the left bank of the Green River between River Mile (RM) 30.8 and RM 31.5, Auburn, King County, Washington, in Section 8, T. 21 N., R. 5 E., WRIA 9.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined 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. §§ 1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 303, 306 and 307);

2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. § 1313 and by Chapter 90.48 RCW, and with other applicable state laws; 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.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. § 1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

- A1. For purposes of this Order, the term "Applicant" shall mean the U.S. Army Corps of Engineers, Seattle District, and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #5709 and Corps Reference #PL-08-09.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on May 23, 2008. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
- A4. Within 30 days of receipt of an updated JARPA, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.

- A5. 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 lead workers, and state and local government inspectors.
- A6. 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, and/or to ensure that conditions of this Order are being met.
- A7. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that 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 water quality.
- A8. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project or mitigation sites.
- A9. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
- A10. 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.

B. Planting Conditions:

- B1. Willow lifts will be installed as shown in Plate number C-301 of plan sheets for PL 84-99 Levee Rehabilitation: Dykstra, Green River, by US Army Corps of Engineers, Seattle District, dated April 8, 2008. Performance standards and maintenance and monitoring for the willow lifts shall be submitted to Ecology for review and approval no later than November 1, 2008.

The performance standards and maintenance and monitoring for the willow lifts shall include the following minimum requirements:

- a. Timing: Construction and installation of planting must occur at the same time as project impacts on aquatic resources.

- b. Baseline Monitoring Report: A baseline monitoring report documenting the final design of the planting area must be prepared when site construction and planting are completed. The report shall include the following:
- i. Vicinity map showing site access.
 - ii. Drawings that clearly identify in plan view the location and square footage of the planted area.
 - iii. The installed planting scheme showing approximate locations of plants and the time of planting.
 - iv. Photographs of the area taken from permanent reference points.
 - v. Locations of photopoints, and sampling sites.
 - vi. A description of any changes to the planting that occurred during construction.

A copy of the baseline monitoring report shall be sent to Ecology per Condition A2 within 60 days of completing construction, and in no case later than July 31, 2009.

- c. Monitoring: Monitoring shall take place four (4) times over a period of five (5) years, with monitoring performed in years 1, 2, 3, and 5. Copies of all monitoring reports shall be submitted to Ecology per Condition A2.
- d. Performance Standards: Performance standards shall include progressively increasing minimum aerial cover by planted and volunteer native species for each monitoring year. Invasive non-native species (including Himalayan and evergreen blackberry, Scots broom, etc.) shall have a maximum combined cover of less than 15 percent throughout the monitoring period.
- e. Maintenance: The Applicant is responsible for maintenance and protection of the native vegetation planting area both throughout and after the 5-year monitoring period.

C. Water Quality Conditions:

- C1. This Order does not authorize a temporary turbidity exceedance beyond the limits established in WAC 173-201A-200(1)(e)(i) for Green River. Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup or surface waters or sediments occurring as a result of project construction or operations.
- C2. In-Water Construction Water Quality Sampling and Monitoring: A Water Quality Protection and Monitoring Plan (Plan) shall be developed and implemented. "In-water construction" is defined as all work below the ordinary high water mark of the Green River.

The Applicant shall submit the Plan for Ecology review and approval per Condition #A2 at least 7 days prior to the start of in-water work.

The Plan shall include the following minimum requirements:

- a. Locations of samples: Locations of water quality sampling sites shall be identified and described in the plan and on a map of the project area. At a minimum, sampling shall take place at the point of compliance as specified in WAC 173-201A-200(1)(e)(i), which allows a 300-foot temporary area of mixing for turbidity resulting from disturbance of in-place sediments in the Green River. Background samples shall be collected outside the area of influence of the in-water work. Background samples shall be collected at the same frequency as the point of compliance samples.
- b. Number of samples: Number and frequency of water quality samples to be taken.
- c. Parameter to be sampled: Turbidity shall be sampled for this project.
- d. Equipment: Sampling for turbidity is to be accomplished using a turbidometer properly calibrated according to the operator's manual.
- e. Best Management Practices (BMPs): A description of the BMPs that will be used during construction to protect water quality.
- f. Detection of exceedances: Water quality standards for turbidity in "Core Summer Salmonid Habitat" waters are as follows: turbidity shall not exceed 5 NTU over background conditions when the background is 50 NTU or less, or a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. If exceedances of this standard at the point of compliance specified in WAC 173-201A-200(1)(e)(i) are detected through water quality sampling and monitoring, the Applicant shall immediately take action to stop, contain, and prevent unauthorized discharges or otherwise stop the violation and correct the problem. After such an event, the Applicant shall assess the efficacy of the site Best Management Practices (BMPs) and update or improve the BMPs used at the work site in an effort to reduce or prevent recurrence of the turbidity exceedance.
- g. Reporting: If no exceedances are detected, results of water quality sampling, as determined by the Water Quality Protection and Monitoring Plan, shall be forwarded to Ecology on a monthly basis in accordance to Condition A2.
- h. Notification of exceedances: Notification of exceedances that are detected through water quality sampling shall be made to Ecology within 24 hours of occurrence. Notification shall be made with reference to Order #5709, Attn: 401/CZM Federal Project Manager, by telephone at (425) 649-7129 or (425) 649-7000, or by fax to (425) 649-7098. The Applicant shall, at a minimum, provide Ecology with the following information:

- i. A description of the nature and cause of non-compliance, including the quantity and quality of any unauthorized discharges;
- ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance; and
- iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
- iv. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology 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, photographs, and any other pertinent information.

D. Conditions for In-Water and Over-Water Construction Activities:

General Conditions:

- D1. Construction stormwater, sediment, and erosion control best management practices (BMPs; *e.g.*, filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
- D2. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- D3. 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.
- D4. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
- D5. 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.
- D6. Clean Fill Criteria: The Applicant shall ensure that fill (rock, gravel) placed for the proposed project does not contain toxic materials in toxic amounts.

Work in Fresh Water:

- D7. All manmade debris that has been deposited below the Ordinary High Water Line within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Concrete blocks, metal debris, cables, submerged timbers and other debris in the construction work corridor that have washed into fresh water areas shall be removed from the project area.
- D8. Work shall be completed in the dry whenever possible.
- D9. If any riprap that has scoured out of the existing levee into the river is repositioned for the levee rehabilitation, to the extent practicable, the Applicant shall minimize movement of the riprap in order to avoid impacts such as suspension of sediments. The riprap shall be picked up using a "thumb" mechanism and placed on the levee slope toe. The riprap shall not be pushed or pulled along the sediments.

E. Emergency/Contingency Measures:

- E1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- E2. The Applicant 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.
- E3. 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.
- E4. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:
 - a. Cease operations at the location of the violation or spill.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.

- c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (425) 649-7129 or (425) 649-7000.
- d. Submit a detailed written report to Ecology per Condition #A2 within five (5) days that describes the nature of the event, 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.

F. Timing Requirements

- F1. This Order is valid until all compliance requirements in this document have been met.
- F2. No in-water work shall occur between September 16 and June 30 of any year in which work is being conducted. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology or WDFW that fisheries resources may be adversely affected.

G. Reporting and Notification Requirement Conditions

- G1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of construction and within 14 days after completion of construction at the project site. Notification, referencing Corps Reference #PL-08-09, Order #5709 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

H. Appeal Process:

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.

- Serve your appeal on the Department of Ecology within 30 days of the “date of receipt” of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). “Date of receipt” is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Department of Ecology
Northwest Regional Office
Attn: Rebekah Padgett
3190 160th Avenue SE
Bellevue, WA 98008

For additional information visit the Environmental Hearings Office Website:
<http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated July 8, 2008 at Bellevue, Washington.



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

ATTACHMENT A

**U.S. ARMY CORPS OF ENGINEERS
DYKSTRA LEVEE REHABILITATION PROJECT
Water Quality Certification Order #5709**

**Statement of Understanding of
Water Quality Certification Conditions**

I have read and understand the conditions of Order #5709 Section 401 Water Quality Certification for the U.S. Army Corps of Engineers Dykstra Levee Rehabilitation Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

Signature

Date

Title

Company