



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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September 28, 2021

Port of Everett
ATTN: Laura Gurley
1205 Craftsman Way, Suite 200
Everett, WA 98201

RE: Amendment to Section 401 Water Quality Certification Order **No. 96899** for U.S. Army Corps of Engineers Reference **No. NWS-2017-744**, Port of Everett, South and Central Basin Marina Maintenance Dredge, Everett, Snohomish County, Washington

Dear Laura Gurley:

Enclosed is an amendment to Water Quality Certification Order No. 96899, issued on June 29, 2018, for the above project. We have also included a strikeout version of the Water Quality Certification that reflects the changes made. All other conditions of Water Quality Certification No. 96899 remain in effect.

The purpose of this amendment is extend the coverage from 5 years to 10 years from the date of certification.

If you have any questions, please contact Laura Inouye at (360)515-8213 or laura.inouye@ecy.wa.gov. The enclosed Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brenden", is written over a horizontal line.

Brenden McFarland, Section Manager
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program

e-cc: Kelly Werdick, U.S. Army Corps of Engineers
Loree' Randall – Ecology HQ
Laura Inouye – Ecology HQ
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING) **ORDER No. 96899**
A WATER QUALITY) **First Amendment**
CERTIFICATION TO) **Corps Reference No. NWS-2017-744**
Port of Everett)
In accordance with 33U.S.C. 1341)
(FWPCA §401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: Port of Everett
Attn: Laura Gurley
1205 Craftsman Way, Suite 200
Everett, WA 98201

On June 29, 2018 the Washington Department of Ecology (Ecology) issued a 401 Water Quality Certification to the Port of Everett for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401).

Ecology received a request on July 12, 2021 to extend the expiration date of the certification, due to Covid-related project delays.

Order No. 96899 dated June 29, 2018 is hereby amended as follows:

I. Condition number C2 which reads:

This Order shall remain in effect for a period of 5 years from date of issuance. An extension for this project beyond the 5 year period will require review and written approval from Ecology, but not to exceed 10 years.

Is replaced with:

This Order shall remain in effect for a period of 10 years from date of issuance.

No other conditions or requirements of the above referenced Order are affected by this amendment.

Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if it appears necessary to further protect the public interest.

Failure to comply with this amended Order may result in the issuance of civil penalties or other actions whether administrative or judicial, to enforce the terms of this amended Order.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW Suite 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Order to:

Laura Inouye
Department of Ecology
Headquarters Office
PO Box 67600
Olympia, WA 98504-7600
(360)515-8213
laura.inouye@ecy.wa.gov

MORE INFORMATION

- **Pollution Control Hearings Board Website**
<http://www.eluho.wa.gov/Board/PCHB>
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**
<http://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**
<http://app.leg.wa.gov/RCW/default.aspx?cite=34.05>



Brenden McFarland, Section Manager
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program

September 28, 2021

Date

IN THE MATTER OF GRANTING A) ORDER #96899
WATER QUALITY) Corps Reference No. NWS-2017-744
CERTIFICATION TO) Port of Everett, South and Central Basin Marina
Port of Everett) Maintenance Dredge, Everett, Snohomish
in accordance with 33 U.S.C. 1341) County, Washington
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: Port of Everett
ATTN: Laura Gurley
1205 Craftsman Way, Suite 200
Everett, WA 98201

On April 26, 2018 the Department of Ecology received a Joint Aquatic Resources Permit Application (JARPA) from the Port of Everett requesting a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on May 4, 2018.

This project will dredge up to 136,600 cubic yards of sediment over a total area of 16.97 acres in the Central and South Basins of the Port of Everett Marina. Dredging will be performed to a target depth of -8 feet to -12 feet Mean Lower Low Water (MLLW) with over-dredge ranging from one-foot to two-feet. Work will be completed using a barge-mounted clamshell dredge and/or excavator; 135,000 cubic yards of dredged material found suitable for open-water disposal under the Dredged Material Management Program (DMMP) and will be placed on a barge and transported to the Port Gardner open-water site for disposal. 1,600 cubic yards of material not included in the DMMP suitability determination will be disposed of at an approved upland site, and 370 cubic yards of clean cover material will be placed in a portion of the Central Basin.

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, 302, 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 meet the 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:

1. In this Order, the term "Applicant" shall mean the Port of Everett and its agents, assignees and contractors.
2. All submittals required by this Order shall be sent to Ecology's Headquarters Office, Attn: Federal Permit Coordinator, P.O. Box 47600 Olympia, WA 98504-7600 and/or ecyrefedpermits@ecy.wa.gov with a cc to laura.inouye@ecy.wa.gov. Any submittals shall reference Order #96899 and Corps Reference # NWS-2017-744.
3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resources Permit Application (JARPA) received by Ecology on April 26, 2018, unless otherwise authorized by Ecology.
4. The Applicant shall obtain Ecology review and approval before undertaking any changes to the proposed project that might significantly and adversely affect water quality, other than those project changes required by this Order.
5. Within 30 days of receipt of the updated information, Ecology will determine if the revised project requires a new public notice and Certification or if a modification to this Order is required.
6. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual 404 and/or Section 10 permit for the project.

7. The Applicant shall send (per A.2.) a copy of the final Section 404 Corps permit to Ecology's Federal Project Manager within two weeks of receiving it from the Corps.
8. The Applicant shall keep copies of this Order 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.
9. 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.
10. 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.
11. In the event of changes or amendments to the state water quality, ground water quality, or sediment standards, or changes in or amendments to the state Water Pollution Control Act (RCW 90.48), or the federal Clean Water Act, Ecology will issue an administrative order to incorporate any such changes or amendments applicable to this project.
12. 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.
13. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state (including wetlands) or related aquatic resources, except as specifically provided for in conditions of this Order.
14. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.
15. This Order will automatically transfer to a new owner or operator if:
 - a. A written agreement between the Applicant and new owner or operator with the specific transfer date of the Order's obligations, coverage, and liability is submitted to Ecology per condition A.2.;
 - b. A copy of this Order is provided to the new owner or operator; and
 - c. If Ecology does not notify the new Applicant that this Order must be modified to complete the transfer.

B. Notification Requirements

1. Notification shall be made via phone or e-mail (e-mail is preferred) to Ecology's Federal Permit Manager (Laura Inouye, 360-407-6165, or e-mail at fednotification@ecy.wa.gov with a cc to laura.inouye@ecy.wa.gov). Notifications shall be identified with Order # 96899 and include the Applicants name, project name, project location, project contact and the contact's phone number.
 - a. Immediately following a violation of state water quality standards or when the project is out of compliance with any of this Orders conditions.
 - i. Within 24 hours of a turbidity exceedance when dredging material suitable for in-water disposal
 - ii. Within 2 hours of a turbidity exceedance when dredging material not suitable for in-water disposal
 - iii. In addition to the phone or e-mail notification, the Applicant shall submit a detailed written report to Ecology 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.
 - b. At least ten (10) days prior to conducting initial in-water work activities for each in-water work window established in the most current HPA.
 - c. Within at least seven (7) days after completion of the in-water work for each in-water work window.

C. Timing

1. All in-water work shall be conducted between September 1 and February 15 of any year. Any project change that requires a new or revised HPA should also be sent to Ecology for review.
2. This Order shall remain in effect for a period of ~~5~~ 10 years from date of issuance. ~~An extension for this project beyond the 5 year period will require review and written approval from Ecology, but not to exceed 10 years.~~

D. Water Quality Monitoring and Criteria

1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-210.
 - The area of mixing established for marine waters is a 150 foot radius surrounding the in-water activity. Turbidity occurring outside that zone that is more than 5 nephelometric turbidity units (NTU) over background when the background is 50 NTU or less, or a 10% increase in turbidity when the background turbidity is more than 50 NTU is a violation of the turbidity water quality standard.

- Visible turbidity anywhere at 150 ft point of compliance from the activity and/or the disposal location shall be considered to be an exceedance of the standard.
2. The Applicant shall comply with the water quality monitoring plan submitted to Ecology on 6/20/2018, and approved by Ecology on 6/25/2018. If changes to the WQMP are proposed at any time during the duration of this Order, the Applicant shall submit a revised plan to Ecology for review and approval. The Applicant shall allow at least a 14 day review time for Ecology. Following Ecology's approval, the Applicant shall comply with the approved, updated WQMP.
 3. Turbidity monitoring reports shall be sent weekly to the 401/CZM Federal permit coordinator as per condition B1.
 4. The permit coordinator shall be contacted within 24 hours if an exceedance occurs for all activities except dredging of unsuitable material and any associated return water. For dredging of unsuitable material and any associated return water, the permit coordinator shall be contacted within 2 hours if an exceedance occurs.

E. Dredging:

1. All dredging is to be done using a clamshell dredge or barge mounted excavator. **Use of any other type of dredge requires preapproval from Ecology.**
2. Dredging operations shall be conducted in a manner that minimizes the disturbance or siltation of adjacent waters and prevents the accidental discharge of petroleum products, chemicals or other toxic or deleterious substances into waters of the State.
3. Dredged material shall not be stockpiled on a temporary or permanent basis below the ordinary high water line.
4. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.
5. The Dredge operator shall pause the bucket at the surface, after its ascent through the water column, to minimize turbidity by allowing free water to drain from the bucket prior to swinging the bucket to the bottom dump scow.
6. The Dredge operator shall not drag buckets, beams, or other items across the dredge surface to meet design grades.
7. Caution shall be used when placing material from the bucket into the scow to limit splash and prevent spillage.
8. Barges shall not be allowed to ground-out during in-water construction.

9. Barges that allow dewatering on-site shall manage loss of suspended sediments through the use of filtration media (hay bales, filter fabric, or other means).
10. Barges are not allowed to dewater during transit.
11. The scow shall not be overfilled to the point where dredge material overtops the sidewalls.
12. A pre-dredge meeting is required to be convened at least 2 weeks prior to the start of each season's dredging.
13. A **Dredging and Disposal Workplan** is required and shall be submitted to Ecology to the 401/CZM Federal permit coordinator at the address shown in Condition A2 for review and approval 21 days prior to each pre-dredge meeting. At a minimum, the dredging plan shall include the following:
 - a. General information including schedule, primary contact, and hours of operation
 - b. Dredged quantities and disposal location
 - c. Dredging procedures and sequence
 - d. Equipment list
 - e. Clear identification of unsuitable material, buffers, placement of sand cover, dredge depths, and restricted dredging areas that are identified in the Public Notice drawings.
 - f. The Dredging and Disposal plan must include dredge sequencing approved by the DMMP agencies. Any changes to dredge sequencing must be approved by the DMMP agencies prior to dredging.
 - g. All dredged material not suitable for in-water disposal will be taken to an approved upland facility. When unsuitable material is dredged, an upland disposal and transloading section must be included in the *Dredging and Disposal Workplan*.
14. Prior to each dredging cycle, the Applicant shall contact the DMMP agencies to determine whether additional sediment testing is required. If additional testing is required, no dredging or disposal shall be conducted until the material has been tested and a suitability determination (SDM) has been issued. This area has multiple ranks in potential for contamination and the recency determination extends until May 2021. If necessary, contact the DMMO for a possible extension on the SDM.
15. Any pre- and post-dredge bathymetry that is conducted shall be submitted to Ecology to the 401/CZM Federal permit coordinator at the address shown in Condition A2.
16. All dredged material suitable for in-water disposal will be at placed at the Port Gardner non-dispersive disposal site via bottom dump barge. Use of any other type of disposal method or location requires pre-approval by Ecology.

17. For material being taken to open water disposal sites, all debris (larger than 2 feet in any dimension) shall be removed from the dredged sediment prior to disposal. A 12 inch by 12 inch debris screen must be used for all material going to in-water disposal sites, unless information is provided to show debris is not present. Similar debris found floating in the dredging or disposal area shall also be removed. Debris shall be disposed of at an appropriately permitted landfill.

F. Sand Cover

1. A minimum 1 foot sand cover shall be placed in the area identified in Public Notice sheets 6 and 9 of 10.

G. Emergency/Contingency Measures:

1. The Applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials and an emergency call list available on site.
2. Any work 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 or operator shall immediately take the following actions:
 - a. Cease operations that are causing the problem.
 - b. Assess the cause of the problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
 - d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
 - e. Immediately notify Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events Ecology's 401/CZM Federal permit coordinator at (360) 407-6165.
 - f. Submit a detailed written report to Ecology 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.

3. 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, including wetlands.
4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology using the above phone numbers.

Redline strikeout Amendment 1