



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

*Northwest Regional Office • PO Box 330316 • Shoreline, Washington 98133-9716 • (206) 594-0000
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January 19, 2022

Acquisition 44, LLC
Attn: Tyler Higgins
3697 Mt. Diablo Boulevard
Lafayette, CA 94549

RE: Section 401 Water Quality Certification Denial Without Prejudice, Order No. 20955,
U.S. Army Corps of Engineers (Corps) Reference No. NWS-2020-789, Auburn Logistics
Center Project, City of Auburn, King County, Washington

Dear Tyler Higgins:

On December 7, 2020, the Department of Ecology (Ecology) received a Request for Clean Water Act Section 401 Water Quality Certification (WQC) for the above-referenced project. On January 22, 2021, Ecology determined that this request was complete as required by the EPA Section 401 Rule in effect at the time, and Ecology has one year from this date to issue its decision.

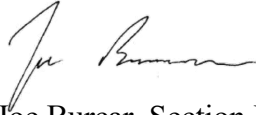
On December 3, 2021, Ecology sent a letter to Acquisition 44, LLC, regarding the approaching January 22, 2022 statutory deadline and listing outstanding information needs and unresolved issues associated with the WQC request. Ecology's letter also described that we would have to deny the WQC for this project without prejudice unless all of the issues described in the letter were resolved and the missing information was submitted by January 7, 2022. Unfortunately, the Wetland Mitigation Plan submitted on January 7, 2022, does not adequately compensate for the project's proposed wetland impacts.

Therefore, pursuant to Section 401 of the Clean Water Act, Chapter 90.48 RCW, and Chapter 173-201A WAC, Ecology is denying without prejudice Acquisition 44, LLC's request for a Section 401 Water Quality Certification. Receipt of a denial without prejudice does not preclude you from submitting a new request for a Section 401 Water Quality Certification at a later date.

Acquisition 44, LLC
January 19, 2022
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If you have any questions, please contact Neil Molstad at (425) 389-5549 or neil.molstad@ecy.wa.gov. The Enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Joe Burcar, Section Manager
Shorelands and Environmental Assistance Program
Northwest Regional Office

Enclosure

Sent by certified mail # 9171 9690 0935 0232 6495 48 and Electronic Mail: thiggins@orchardpartners.com

e-cc: Amanda Nadjkovic, U.S. Army Corps of Engineers
Jon Pickett, Soundview Consultants LLC
Thaniel Gouk, City of Auburn
Eric Solly, Registered Agent, Acquisition 44, LLC
Stewart Reinbold, Washington Department of Fish and Wildlife
Loree' Randall, Ecology
Rebekah Padgett, Ecology
Neil Molstad, Ecology
Grant Yang, Ecology
Amy Jankowiak, Ecology
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF DENYING)	ORDER No. 20955
SECTION 401 WATER QUALITY)	Corps Reference No. NWS-2020-789
CERTIFICATION TO)	Auburn Logistics Center Project, City of
Acquisition 44, LLC)	Auburn, King County, Washington
in accordance with 33 U.S.C. 1341 (FWPCA)	
§ 401), RCW 90.48.260 and Chapter 173-)	
201A WAC)	

Acquisition 44, LLC
 Attn: Tyler Higgins
 3697 Mt. Diablo Boulevard
 Lafayette, CA 94549

On December 7, 2020, the Department of Ecology (Ecology) received a Request for Clean Water Act Section 401 Water Quality Certification (WQC) for the above-referenced project. On January 22, 2021, Ecology determined that this request was complete as required by the EPA Section 401 Rule in effect at the time, and Ecology has one year from this date to issue its decision. On January 28, 2021, the U. S. Army Corps of Engineers issued a joint public notice for the project.

On December 3, 2021, Ecology sent you an application status letter via electronic mail explaining that we needed additional information and resolution of the following issues:

- A State Environmental Policy Act (SEPA) determination from the City of Auburn.
- Concurrence with the wetland boundaries at the wetland mitigation site.
- Review, finalization, and agreement on the Wetland Mitigation Plan for the project.
- Review, finalization, and agreement on a Water Quality Monitoring and Protection Plan (WQMPP) for the project site and the wetland mitigation site.

Since the December 3, 2021 letter Ecology has received the following information and taken the following actions:

- A State Environmental Policy Act (SEPA) determination from the City of Auburn, dated January 4, 2022.
- Water Quality Monitoring Plan (WQMP) for the project, received on January 7, 2022. Ecology has reviewed the plan and has determined that this plan needs to be revised. Specific comments relating to the WQMP have been provided to Acquisition 44, LLC’s consultant under separate cover.
- In an email dated December 27, 2021, Ecology concurred with the wetland boundaries for the mitigation site as depicted on the Auburn Logistics Center – Existing Conditions plan sheet within the January 7, 2022 iteration of the Wetland Mitigation Plan for the project.

- An updated Wetland Mitigation Plan for the project was received on January 7, 2022. This iteration of the Wetland Mitigation Plan characterizes a resource trade-off associated with re-creation/re-establishment of portions of Mill Creek within the off-site mitigation area as sufficiently compensating for a deficiency of approximately 1.25 acres of wetland mitigation. Ecology does not agree, and will continue to work with Acquisition 44, LLC's consultant towards a wetland mitigation plan that adequately compensates the proposed wetland impacts.

At this time Ecology has not finalized agreement with Acquisition 44, LLC on the Wetland Mitigation Plan for the project, for the reason described above. Therefore, there is not reasonable assurance that the project will meet state water quality laws. With the statutory deadline approaching and outstanding issues unresolved, Ecology must deny without prejudice this WQC request at this time. Therefore, pursuant to Section 401 of the Clean Water Act, Chapter 90.48 RCW and Chapter 173-201A WAC, Acquisition 44, LLC's request for a WQC for the Auburn Logistics Center Project is denied without prejudice.

Receipt of a denial without prejudice does not preclude you from submitting the information identified above with a new request for a WQC at a later date.

YOUR RIGHT TO APPEAL

You have a right to appeal this Denial Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Denial 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 all of the following within 30 days of the date of receipt of this Order:

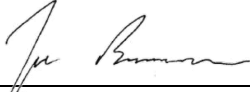
- File your appeal and a copy of this Denial Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Denial Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

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

SIGNATURE



Joe Burcar, Section Manager
Shorelands and Environmental Assistance Program
Northwest Regional Office
Department of Ecology

January 19, 2022
Date