



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Southwest Region Office
PO Box 47775, Olympia, WA 98504-7775 • 360-407-6300

June 27, 2023

Kerr Contractors
Attn: Tim Kerr
PO Box 1060
Woodburn, OR 97071

Re: Administrative Order No. 21716 to permanently fill/impact 14.76 of non-federally regulated wetlands and 0.25 acres of non-federally regulated ditches, which are waters of the state, to construct Mint Farm Industrial Site in Cowlitz County, Washington

Dear Kerr Contractors:

The Department of Ecology (Ecology) received your Joint Aquatic Resources Permit Application (JARPA) on April 24, 2023, requesting authorization for proposed work in non-federally regulated wetlands and ditches, which are waters of the state. Ecology has determined that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Chapter 90.48 RCW and other applicable requirements of state law.

This approval is subject to the conditions contained in the enclosed Order. **You must familiarize yourself with and abide by the conditions in the Order, including all notification requirements.** If you have any questions, please contact Meghan Tait at Meghan.tait@ecy.wa.gov or 360-210-2783. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Maria Sandercock, Section Manager
Southwest Region
Shorelands and Environmental Assistance Program

Enclosure

By certified mail 9489 0090 0027 6094 0258 40

Kerr Contractors

June 27, 2023

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ec: Danette Guy, U.S. Army Corps of Engineers
McAllister Kosar, City of Longview
Carol Ruiz, Gibbs & Olson, Inc.
ECYREFEDPERMITS@ECY.WA.GOV



STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

IN THE MATTER OF ISSUING AN) ORDER No. 21716
ADMINISTRATIVE ORDER TO) Corps Ref. No. NWS-2020-364
Kerr Contractors) Mint Farm Industrial Site, Wetlands A, B,
pursuant to RCW 90.48.120 and WAC 173-201A) E, F, G, H, I, J and Ditch 1-10 located in
) Cowlitz County, Washington

TO: Kerr Contractors
Attn: Tim Kerr
PO Box 1060
Woodburn, OR 97071

This is an Administrative Order requiring Kerr Constructors to comply with Chapter 90.48 RCW and the rules and regulations of the Department of Ecology (Ecology) by taking certain actions which are described below. RCW 90.48.120(2) authorizes Ecology to issue Administrative Orders requiring compliance whenever it determines that a person has violated or creates a substantial potential to violate any provision of Chapter 90.48 RCW.

The U.S. Army Corps of Engineers (Corps) issued a jurisdictional determination on January 19, 2021, concluding that Wetlands A, B, E, F, G, H, I, and J and Ditch 1 through 10 are not waters of the U.S. On April 24, 2023, Ecology received a request to impact 14.76 acres of non-federally regulated wetlands and 0.25 acres of non-federally regulated ditches, which are waters of the state, to construct Mint Farm Industrial Site in Cowlitz County. The project is located at Cowlitz County Parcel No. 101930300, Crocker Ave. in Longview.

This Administrative Order authorizes 14.76 acres of Category 4 wetland impacts at the project location. Compensatory mitigation for the wetland fill has been provided through the previously approved advanced wetland mitigation site (NWS-1998-4-00832) which is located adjacent to and east of the subject property.

For purposes of this Order, the term "Project Proponent" shall mean Kerr Contractors and its agents, assigns, and contractors.

In view of the foregoing and in accordance with RCW 90.48.120(2):

IT IS ORDERED that the Project Proponent shall comply with the following:

A. General Conditions:

1. The Project Proponent shall construct and operate the project in a manner consistent with the project description contained in the JARPA received by Ecology on April 24, 2023, or as otherwise approved by Ecology.
2. For purposes of this Order, all submittals required by its conditions shall be sent to fednotification@ecy.wa.gov and cc to Meghan.tait@ecy.wa.gov. Any submittals shall reference Order No. 21716.
3. The Project Proponent shall provide access to the project site and mitigation site upon request by Ecology.
4. 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 forepersons, and state and local government inspectors.
5. 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.
6. The Project Proponent 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.

B. Notification Requirements:

1. The Project Proponent shall provide written notification to Ecology in accordance with condition A.2. for the following activities:
 - a. Immediately following a violation of the state water quality standards or when the project is out of compliance with any condition of this Order.

C. Wetland Mitigation Conditions:

1. The Project Proponent shall mitigate wetland impacts as described in the *Advance Mitigation Use Plan* (hereafter called the "Mitigation Plan") prepared by Soundview

Consultants, and dated September 2020, or as required by this Order or revised and approved by Ecology.

2. Prior to earth disturbing activities, the Applicant must install appropriate erosion controls around the perimeter of the construction site to ensure unpermitted impacts do not occur and that the mitigation site is protected from construction activities.
3. Permanent fencing and signage shall be installed between the mitigation site and the development to protect the wetlands and wetland buffer area; split rail fencing is allowed to provide for wildlife movement.

D. Timing

1. This Order is valid until the Project Proponent meets all its requirements and the Project Proponent has received written notification from Ecology to that effect.

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

Your right to appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by RCW 43.21B and WAC 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2). More information is available at <https://eluhho.wa.gov/content/11>.

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

- File your notice of appeal and a copy of this Order with the PCHB (see filing options below). "Filing" means actual receipt by the PCHB during regular business hours as defined in WAC 371-08-305 and -335. "Notice of appeal" is defined in WAC 371-08-340.
- Serve a copy of your notice of appeal and this Order on the Department of 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 RCW 43.21B and WAC 371-08.

Filing an appeal with the PCHB:

For the most current information regarding filing with the PCHB, visit:
www.eluhho.wa.gov/content/11

Filing by mail

Mailing Address:

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

Filing electronically

Email address:

pchb-shbappeals@eluhwa.gov

Filing in person (or by certified mail/courier)

Street Address:

Pollution Control Hearings Board
1111 Israel RD SW
STE 301
Tumwater, WA 98501

Serving a copy of the appeal on Ecology:

Electronic copies of appeals are not accepted at the Department of Ecology per WAC 371-08-305(10).

Filing by mail

Mailing Address:

Department of Ecology
Attn: Appeals Processing Desk
PO Box 47608
Olympia, WA 98504-7608

Filing in person (or by certified mail/courier)

Street Address:

Department of Ecology
Attn: Appeals Processing Desk
300 Desmond Drive SE
Lacey, WA 98503

Contact information

Please direct all questions about this Order to:

Meghan Tait
Department of Ecology
Vancouver Field Office
12121 NE 99th St, Ste. 2100
360-210-2783
Meghan.tait@ecy.wa.gov

More information

- **Pollution Control Hearings Board Website**
<https://eluhwa.gov/content/11>
- **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>
- **Chapter 90.48 RCW – Water Pollution Control**
<http://app.leg.wa.gov/RCW/default.aspx?cite=90.48>
- **Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>

Signature

Dated this 27th day of June, 2023 at the Department of Ecology, Olympia, Washington.



Maria Sandercock, Section Manager
Southwest Region
Shorelands and Environmental Assistance Program