



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

March 18, 2020

US Army Corps of Engineers
Attn: Chemine Jackels
PO Box 3755
Seattle WA 98124-3755

RE: Water Quality Certification Order No. **18080** for Corps Public Notice No. **CENWS-PMP-20-01**, Keystone Harbor Federal Navigation Channel maintenance dredging, Whidbey Island, located in Island County, Washington.

Dear Chemine Jackels:

On January 29, 2020, the US Army Corps of Engineers submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act, for the Keystone Harbor Federal Navigation Channel maintenance dredging, Whidbey Island, located in Island County, Washington.

On behalf of the State of Washington, the Department of Ecology certifies that the work described in the JARPA and the 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.

If you have any questions, please contact Laura Inouye at 360-407-6165 or email laura.inouye@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Brenden McFarland, Section manager, by *Loree Randall*
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program

Enclosure

E-CC: ECY RE FEDPERMITS
Loree Randall – HQ, SEA
Michael Suh, Corps
Elizabeth Chien, Corps



IN THE MATTER OF GRANTING A)	ORDER # 18080
WATER QUALITY)	Corps Reference No. CENWS-PMP-20-01
CERTIFICATION TO)	Keystone Harbor Federal Navigation Channel
US Army Corps of Engineers)	maintenance dredging, Whidbey Island, located
in accordance with 33 U.S.C. 1341)	in Island County, Washington.
(FWPCA § 401), RCW 90.48.120, RCW)	
90.48.260 and Chapter 173-201A WAC)	

US Army Corps of Engineers
 Attn: Chemine Jackels
 PO Box 3755
 Seattle WA 98124-3755

On January 29, 2020, the Department of Ecology (Ecology) received the US Army Corps of Engineers (Corps) request for a Section 401 Water Quality Certification (WQC) for the Keystone Harbor Federal Navigation Channel maintenance dredge. Ecology issued a public notice for the project on February 12, 2020.

Keystone Harbor is used as a ferry terminal by Washington State Ferries System (Port-Townsend-Coupeville route), as well as a recreational boat launch. The proposed project entails maintenance dredging to -27 feet below mean lower low water. Dredging would be up to 50,000 cy of material by either hydraulic or clamshell dredge per dredge event, with a project maximum of 165,000 cy. Material will be used beneficially to nourish a section of the beach to the east of the breakwater.

This project is located in sections 22, 23, and 34, township T313N, and range R1E, WRIA 6 (Keystone Harbor).

AUTHORITIES

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed 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 comply with 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 Corps to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification absolves Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments resulting from project construction or operations.

A. General Conditions

1. In this Order, the term "Applicant" shall mean the US Army Corps of Engineers (Corps) and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent to Headquarters Office, Attn: Federal Permit Manager, PO Box 47600, Olympia, WA 98504 or via e-mail to fednotification@ecy.wa.gov and cc to laura.inouye@ecy.wa.gov. The submittals shall be identified with Order #18080 and include the Applicant name, project name, project contact, and the contact phone number.
3. Work authorized by this Order is limited to the work described in the JAR received by Ecology on January 29, 2020.
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 any updated information, Ecology will determine if the revised project requires a new public notice and Water Quality Certification or if a modification to this Order is required.
6. 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.
7. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, and/or necessary data collection, to ensure that conditions of this Order are being met.

8. 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.
9. 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 may issue an amendment to this Order to incorporate any such changes or amendments applicable to this project.
10. The Applicant shall ensure that all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand the conditions of this Order and any permits, plans, documents, and approvals referenced in the Order.
11. 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.
12. Failure of any person or entity to comply with the Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

B. Notification Requirements

1. The following notification shall be made via phone or e-mail (e-mail is preferred) to Ecology's Federal Permit Manager via e-mail to fednotification@ecy.wa.gov and cc to the project manager at laura.inouye@ecy.wa.gov. Notifications shall be identified with Order No. 18080 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.
 1. 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 all pre-construction meetings
 - c. At least ten (10) days prior to conducting initial in-water work activities for each in-water work window.
 - d. At least seven (7) days within project completion for each dredging cycle.

C. Timing

1. This Order will expire five (5) years from the date of issuance. Continuing this project beyond the five-year term of this Order will require the Applicant to obtain review and written approval by Ecology to extend the project for an additional five (5) years. The total term of this Order shall not exceed a total of ten (10) years total.
2. In-water work shall be conducted between July 16 and February 15 of any year, unless otherwise approved by Ecology.

D. Water Quality Monitoring & Criteria

1. Keystone Harbor is categorized as extraordinary aquatic life uses designation per the standards and the criteria of the categorization apply as described in WAC 173-201A-210(1), except as specifically modified by this Order.
2. This Order does not authorize the Applicant to exceed applicable turbidity standards beyond the limits established in WAC 173-201A-210(1)(e)(i).
3. The Applicant shall revise the *Draft Water Quality Monitoring Plan- Mechanical and Hydraulic Dredging, Keystone Harbor Maintenance Dredging and Disposal* (Plan) prepared by Chemine Jackels for the Corps dated March 2020 to update the plan with contractor specific information and to be consistent with the conditions of this Order. A final Plan shall be submitted to Ecology's Federal Permit Manager (per Condition A.2. of this Order) **for review and approval** at least 2 weeks days prior to beginning any work covered by this Order.
4. The Applicant must provide, in writing, any changes or additions to the WQMP and obtain approval from Ecology's Federal Permit Manager prior to implementation of the changes or additions.
5. Monitoring results shall be submitted weekly to the Ecology Federal Permit Manager, per condition A.2.
6. Mitigation and/or additional monitoring may be required if the monitoring results indicate that the water quality standards have not been met.
7. Visible turbidity anywhere beyond the temporary area of mixing (point of compliance) from the activity shall be considered an exceedance of the standard.
8. If water quality exceedances for turbidity are observed outside the point of compliance, work shall cease immediately and the Applicant or the contractor shall assess the cause of the water quality problem and take immediate action to stop, contain, and correct the problem and prevent further water quality turbidity exceedances.

Dredging

9. All dredging is to be done using either a hydraulic or a clamshell dredge. **Use of any other type of dredge requires preapproval from Ecology.**
10. All dredged material will be placed beneficially to nourish a section of the beach to the east of the breakwater. **Use of any other type of disposal method or location requires pre-approval by Ecology.**
11. Dredging operations shall be conducted in a manner that minimizes the disturbance and siltation of adjacent waters and prevents the accidental discharge of petroleum products, chemicals or other toxic or deleterious substances into state waters.
12. Dredged material shall not be temporarily or permanently stockpiled below the OHWM.
13. A pre-dredge meeting is required to be convened prior to the start of dredging each dredging cycle. A **Dredging and Disposal Workplan** is required and shall be submitted to Ecology to the 401/CZM Federal permit manager at the address shown in Condition A2 for review and approval 2 weeks prior to the pre-dredge meeting.
14. The *Dredging and Disposal Workplan* shall include the following:
 - General information including schedule, primary contact, and hours of operation
 - Dredged quantities and disposal location
 - Dredging procedures and sequence
 - Equipment list
15. 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 has been issued. This area ranks very low in potential for contamination and the recency determination extends until November 2029. Contact the DMMO for a possible extension on this determination.
16. After each dredging cycle, the Applicant will submit post-dredge bathymetry and the volume dredged.
17. If the maintenance dredging will not be conducted per the approved *Dredging and Disposal Workplan*, the Applicant shall submit a revised plan 30 days prior to the maintenance dredging event.
18. Dredging of 50,000 cubic yards is allowed for each maintenance dredge.
19. Dredging shall be confined to the existing footprint, except as modified by this Order.

E. Emergency/Contingency Measures

1. The Applicant shall develop and implement a spill prevention and containment plan for this project.
2. The Applicant shall have adequate and appropriate spill cleanup material available on site at all times during construction.
3. 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.
4. 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.
5. Work causing distressed or dying fish, discharges of oil, fuel, or chemicals into state waters or onto land with a potential for entry into state waters, is prohibited. If such work, conditions, or discharges occur, the Applicant shall notify the Ecology Federal Permit Manager per condition B.1. and immediately take the following actions:
 - a. Cease operations at the location of the non-compliance.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. 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.
 - d. Immediately notify Ecology's Regional Spill Response Office and the Washington State Department of Fish & Wildlife with the nature and details of the problem, any actions taken to correct the problem, and any proposed changes in operation to prevent further problems.
 - e. Immediately notify the National Response Center at 1-800-424-8802, for actual spills to water only.
6. Notify Ecology's Regional Spill Response Office immediately if chemical containers (e.g. drums) are discovered on-site or any conditions present indicating disposal or burial of chemicals on-site that may impact surface water or ground water.

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 STE 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
PO Box 47600
Olympia, WA 98504
360-407-6165
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>
- **Chapter 90.48 RCW – Water Pollution Control**
<http://app.leg.wa.gov/RCW/default.aspx?cite=90.48>
- **Chapter 173.204 WAC – Sediment Management Standards**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-204>
- **Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-200>
- **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 18th day of March 2020 at the Department of Ecology, Olympia, Washington



Brenden McFarland, Section Manager, *by Lorce Randall*
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program