



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

*Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000
711 for Washington Relay Service • Persons with a speech disability can call (877) 833-6341*

July 23, 2020

Melissa Dahl
City of Kent Public Works Department
220 Fourth Avenue South
Kent, WA 98032

**RE: Section 401 Water Quality Certification Denial without Prejudice, Order No. 18123
U.S. Army Corps of Engineers Reference #NWS-2018-726
Mill Creek Re-Establishment Project, Kent, King County, Washington**

Dear Melissa Dahl:

On July 24, 2019, the Department of Ecology (Ecology) received a Joint Aquatic Resource Permit Application (JARPA) requesting a Water Quality Certification for the above referenced project. Ecology has one year to issue our decision for an individual Section 401 Water Quality Certification (WQC) or we waive our authority.

On July 14, 2020, Ecology spoke to the City of Kent (City) regarding the approaching statutory deadline and remaining information needs. Based on our conversation, it was acknowledged the City would not be able to provide the necessary information to Ecology for review prior to the WQC deadline.

Therefore, pursuant to Section 401 of the Clean Water Act, Chapter 90.48 RCW, and Chapter 173-201A WAC, Ecology is denying without prejudice the City of Kent's request for a WQC. Receipt of a denial without prejudice does not preclude you from resubmitting a request for a WQC at a later date, at which time we will begin a new review of the project.

If you have any questions, please contact Doug Gresham at (425) 649-7199. The enclosed Order may be appealed by the following procedures described in the Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Burcar", is written over a horizontal line.

Joe Burcar, Section Manager
Shorelands and Environmental Assistance Program

City of Kent Public Works Dept.

July 23, 2020

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Enclosure

Sent via email: mdahl@kentwa.gov

E-cc: Doug Gresham, Ecology
Loree' Randall, Ecology
Kristin McDermott, U.S. Army Corps of Engineers
Laura Zanetto, ICF International
ecyrefedpermits@ecy.wa.gov

| | | |
|--|---|---|
| IN THE MATTER OF DENYING |) | Order No. 18123 |
| SECTION 401 WATER QUALITY |) | Corps Reference No. NWS-2018-726 |
| CERTIFICATION TO THE CITY OF |) | Mill Creek Re-Establishment, Kent, King |
| KENT |) | County, Washington |
| in accordance with 33 U.S.C. 1341 (FWPCA |) | |
| § 401), RCW 90.48.260 and Chapter 173- |) | |
| 201A WAC |) | |

Melissa Dahl
City of Kent Public Works Department
220 Fourth Avenue South
Kent, WA 98032

On July 24, 2019, the Department of Ecology (Ecology) received the Joint Aquatic Resource Permit Application (JARPA) for the above referenced project. Ecology has one year to issue its decision on an individual Section 401 Water Quality Certification (WQC) or we waive our authority.

On July 14, 2020, Ecology spoke to the City of Kent (City) regarding the approaching statutory deadline and remaining information needs. Based on our conversation, it was acknowledged that the City would not be able to provide the necessary information to Ecology for review, prior to the deadline.

Therefore, pursuant to Section 401 of the Clean Water Act, Chapter 90.48 RCW, and Chapter 173-201A WAC, the City of Kent's request for a WQC is denied without prejudice.

Receipt of a denial without prejudice does not preclude the City from resubmitting a request for a WQC at a later date, at which time we will begin a new review of the project.

YOUR RIGHT TO APPEAL

You have a right to appeal this Denial Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this denial. 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 denial:

- File your appeal and a copy of this denial 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 on Ecology in paper form - by mail or in person. (See addresses below.) Email 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 RD 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 denial to:

Doug Gresham
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008
(425) 649-7199
doug.gresham@ecy.wa.gov

MORE INFORMATION

Pollution Control Hearings Board Website

www.eluho.wa.gov/Board/PCHB

Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board

<https://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>

Chapter 371-08 WAC – Practice and Procedure

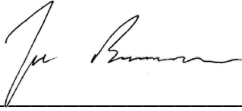
<https://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>

Chapter 34.05 RCW – Administrative Procedure Act

<https://apps.leg.wa.gov/RCW/default.aspx?cite=34.05>

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SIGNATURE



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

7/23/20

Date