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November 15, 2001

VIA FACSIMILE

Ms. Kaleen Cottingham, Presiding Officer
Pollution Control Hearings Board
Rowe Six, Bldg. 2, MS 40903
4224 6th Avenue SE
Lacey, WA 98504-0903

Re: PCHB Case No. 01-160
Plans and Reports Prepared Pursuant to §401 Certification

Dear Ms. Cottingham:

As required by the Board's Prehearing Order in this matter, the Port of Seattle herein identifies the plans and reports (other than ministerial documents) prepared or expected to be prepared pursuant to the §401 Certification and on which the Port or Ecology may rely at the hearing on the merits. The Port has consulted with Ecology on the list included below.

In addition, the Port has identified certain ministerial documents to be prepared pursuant to the §401 Certification. Any document deemed to be non-ministerial is hereby listed as a document to be prepared after February 15, 2001.

The §401 Certification requires the submittal of certain plans and reports, both before and after the November 15, 2001 date set by the Board. With respect to each report submitted, it is possible that Ecology may require changes. The Port reserves the right to submit as an exhibit any such changes required by Ecology. In addition, it is possible that the U.S. Army Corps of Engineers may require changes to some plans as part of the §404 permitting process. The Port reserves the right to submit as an exhibit any changes required by the COE.

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A. Plans and reports prepared and/or submitted on or before November 15, 2001.

1. Mitigation plan for the Wetland A17 complex. §401 ¶D.4.
The Wetland A17 mitigation plan was submitted to Ecology on 9/8/01.
2. Best management practices to prevent interception of contaminated groundwater and plan to monitor potential contaminant transport via subsurface utility lines. §401 ¶F.1.
These documents were submitted to Ecology on 9/10/01.

B. Plans and reports to be submitted between November 16, 2001 and February 1, 2001.

1. Revised Natural Resource Mitigation Plan (NRMP). §401 ¶D.1 *et seq.*
The revised NRMP will include both the Auburn Site Mitigation Plan and the Borrow Site Three plans mentioned in the §401 Certification.
Port will submit the Revised NRMP to Ecology on or about 11/21/01.
2. Surface Water and Ground Water Monitoring Plan, including monitoring plan regarding subsurface utility lines. §401 ¶E.3.
The Port will submit this monitoring plan on or about 11/19/01.
3. Revised Low Streamflow Analysis and Low Flow Offset Proposal. §401 ¶ L.1.
The revised low streamflow analysis and mitigation plan will be submitted by the Port to Ecology on or about 12/17/01.
4. Stormwater Facilities Operation and Maintenance Plan. §401 ¶J.2.f.
The operation and management plan is required to be submitted by 3/19/02.
The Port can submit the plan on or before 2/1/02.
5. Construction Stormwater Pollution Prevention Plan (SWPPP) and Erosion and Sediment Control plans pursuant to existing NPDES permit. §401 ¶¶H.3 & K.1.
These plans are developed on a project-by-project basis, and will be prepared in this fashion for the projects covered by the §401 Certification. The Port's construction SWPPP is implemented in each project's construction documents at the Port on a project-by-project basis. Those provisions are already in place pursuant to the existing NPDES.
The Port reserves the right to submit sample SWPP and ESC plans prior to 2/1/01.

6. Spill Prevention and Containment Plan for all project elements. §401 ¶L.1.
The Port has current spill prevention and containment plan provisions for all projects. Like the SWPPP, these provisions are implemented on a project-by-project basis and included in construction documents. Those same provisions will be utilized for all projects subject to the §401 Certification.
The Port reserves the right to submit sample Spill Prevention and Containment plans prior to 2/1/01.

C. Ministerial documents that may be prepared and submitted pursuant to the §401 Certification.

1. A specific monitoring plan for each in-water or shoreline project. §401 ¶A.2.a.
A plan for each separate project is required 30 days prior to start of each construction project. This plan would be required, of course, only if a §404 permit was issued by the Corps of Engineers.
These plans are ministerial because the monitoring requirements are specified in §401 Certification and in the Natural Resources Mitigation Plan.
2. Monitoring reports are required for each project-specific monitoring plan. §401 ¶A.2.h.
This monitoring would not occur unless a §404 permit was issued and work commenced. The monitoring reports would be ministerial and factual in nature, because the monitoring requirements are already being specified in the NRMP.
3. Hydrologic monitoring of downslope wetlands. §401 ¶D.1.g.
This monitoring is ministerial and factual in nature, because the monitoring requirements are being specified in the NRMP.
4. Restrictive covenants for all wetland mitigation areas are required to be recorded within 60 days after issuance of a §404 permit from COE. §401 ¶¶D.2; D.4.h. & D.6.f. As-built plans for wetland mitigation sites are due 60 days after the completion of construction. §401
These restrictive covenants would be ministerial because approved drafts for restrictive covenants are included in the NRMP.
5. Monitoring of wetland hydrology and wetland protection swales is required after construction of the in-stream improvements. §401 ¶¶ D.6.d & D.6.e.
This monitoring is factual and ministerial in nature because the monitoring criteria are included in the NRMP.

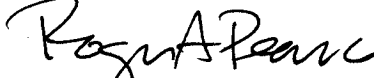
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6. Documentation of each fill source utilized for embankment fill, both within wetlands and on uplands, and monthly summaries of fill locations. §401 ¶¶E.1.a & E.2.
These documents will be submitted to Ecology on an ongoing basis. The reports are ministerial because the criteria for fill acceptance are set forth in the §401 Certification.
7. Monitoring plan for stormwater and construction dewatering discharges at Auburn mitigation site. §401 ¶K.8.
This monitoring plan is required 30 days prior to the beginning of construction at the Auburn mitigation site. This plan is ministerial in nature because the criteria for monitoring are already set forth in the NRMP.

Copies of all plans and reports will be submitted to the attorneys for petitioner ACC in conformity with the Board's Prehearing Order.

Very truly yours,

FOSTER PEPPER & SHEFELMAN PLLC



Roger A. Pearce
Attorneys for Port of Seattle

cc: Counsel of record (via FAX)