

8/16/2001

~~MONITORING~~ ~~REPORTING~~ ~~PLANS~~ ensure success of MIT - AEG Cop.
if it fails cond. require more mit -
its what makes 401 defensible

Overriding messages:

- We believe the 401 Certification is clear. The Port should not be surprised by the conditions as they were discussed prior to issuance of our decision at one point or another i.e., when pushed to issue the 401, we discussed the types of conditions that would be necessary, and the Port indicated it understood
- Essentially the Port got what it wanted given the time constraints. Now it wants us to build back in more certainty after the fact
- We have not been/are not being unreasonable. Our processing of the NPDES major modification is evidence to this – we can work with the Port on its needs, and accomplish our objectives at the same time

FTE

More specific responses to the Port's concerns:

- Typo changes in the 401 etc. are OK – any substantive changes/amendments to wording of the 401 starts a new appeal period. We would need to rescind the 401 and start over if agree to substantive changes
- Regarding the idea permit is “open-ended”. We can provide some level of comfort with the conditions, but we can't (should not) change them. We should not make our commitment to provide clarity in writing however, only verbally during the appeal period. We can write a letter explaining essence of range of possibilities later.
- But – first we should ask the Port to put into writing what is unclear. (The Port should be very thoughtful regarding what it puts into writing.) We can respond more effectively and efficiently to written concerns
- The 401 is clear with respect to where Ecology will need resources to oversee implementation of the certification. The monitoring, reporting and plan submittal requirements for the Port will drive the work plans for staff at Ecology.

Plan:

- Call Joan at 1:30 if necessary
- At the meeting, we can commit to keeping channels of communication open
- At the meeting, we can say we will make staff and attorneys available next week to provide “clarity” only regarding 401 terms and conditions

Heilig
 EXHIBIT NO. 99
 1-8-02
 M. Green

Special note:

We are now in a “pre-litigation” or “litigation prep” mode, and should not release information pursuant to the PDA until we get clarification from the AAGs

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8-17-01

~~Intent~~

(A) Clarity/Personal

- Categories of concern/ambiguities
- approval required (401, SL permits)
- timeframe
- retaking - 2 for? intent.
- > exposure w/ all of a1.

Oppositions
FTEs
- Help

Issues - need to work together

major
PP
ISSUES

timing
retreat schedule %? (A)
↳ behind already

(P) fill criteria - beyond FULL ESA re
↳ ev. been.

(A) full sponsor hydro monitoring - use a
CPAC - no - may use 1 yr

↳ Constraints can stop contracts - cost
(schedule + budget implications)

AR 017833

- next step = MVA
- ~~WAKA WAKA WAKA~~

- workplans
X Y Z ?
PICK CHIF
1st

Implications

8/14/2001

Third Runway – Substantive Conditions/Provisions in 401 WQ Certification

In additions to the substantial stormwater management and wetland/habitat mitigation proposals submitted by the Port, Ecology imposed a few conditions to ensure a decision that we believe is scientifically, technically and legally defensible.

1. Requirements for **additional wetland mitigation** to offset temporary impacts caused by runway construction related work
2. **Added buffers** around Borrow site 3 to protect wetland hydrology
3. **Water quality monitoring** regarding the need for more BMPs (best management practices) – to ensure WQ standards are met, and to ensure proper linkage to the NPDES 402 permit
4. Requirements for **retrofitting existing stormwater management facilities**
5. Requirements for a **Water Effects Ratio (WER) Study**, to provide an option for establishing limits for discharges from new stormwater management facilities and for purposes of updating the 402
6. **Low-flow alternatives analysis** for the Walker Creek sub-basin
7. **Acceptable fill criteria** – to prevent importation of toxic fill in toxic amounts

AR 017834