

Submitted by:

**RCAA**

Regional Commission on Airport Affairs

**Luster, Tom**

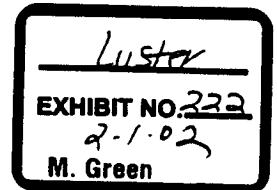
**From:** Fitzpatrick, Kevin  
**Sent:** Friday, May 14, 1999 5:14 PM  
**To:** Luster, Tom; Hellwig, Raymond; Ehlers, Paula; Stockdale, Erik; Bolender, Wendy  
**Cc:** Austin, Lisa; Glynn, John; Moore, Bill  
**Subject:** RE: Updated 401 Permit Matrix

Tom: You are correct (Item # 13) that there should be no question about the retrofiting of existing storm water outfalls that are part of industrial activity basins. What needs to be developed in the NPDES permit is a compliance schedule on how and when this retrofiting will occur.

I am becoming as frustrated as you, Tom, in the way we are continuing to talk past each other over how storm water discharges achieve compliance with WQ Standards (Items #11 & 12). Again, the WQ approach to achieve compliance is by a step-wise and deliberative approach ("adaptive management" for lack of a better term) of applying current technology BMPs, monitoring the effectiveness of those BMPs and then determining additional measures (i.e. additional source control, development of innovative BMPs) should monitoring indicate that storm water discharges are adversely impacting beneficial uses of the receiving water. I know that you want to employ the 401 Certification to require instantaneous and strict categorical compliance with the numeric WQ standards for storm water discharges. I don't see how that is possible. I can't make that happen with the NPDES Permit. That being the case, and if that is how you indeed want to condition the 401 Certification, I see no alternative but to deny a 401 certification for any project with existing storm water discharges.

—Original Message—

**From:** Luster, Tom  
**Sent:** Friday, May 14, 1999 3:27 PM  
**To:** Hellwig, Raymond; Ehlers, Paula; Stockdale, Erik; Fitzpatrick, Kevin; Bolender, Wendy  
**Subject:** RE: Updated 401 Permit Matrix



Hi Ray and all --

Gosh, comments from Tom Luster!!! Yes, who'd of guessed it...

First, an editorial comment, provided at the risk of sounding like a broken record... I think part of my role in 401 is to provide applicants with clear understanding of what's expected for project approval. For some reason, I apparently am not making myself clear enough -- we've told the Port many times what was needed to meet the regulations and the level of information we expected, and they have often either come back with something that falls far short of our requirements, or as in the current situation, have asked us to lessen what we're requiring (e.g., reconsider whether NW Ponds are waters of the state, whether flow augmentation is necessary, etc.). I think we are all in agreement that there are many ways to get to a complete mitigation package,

The Port has made great strides on some of the issues -- for instance, the current mitigation discussions are going far better than those of a year ago. However, given the magnitude of this project and its impacts, and the current conditions in the Des Moines and Miller Creek watersheds, it will take a substantial and specific mitigation package for us to be able to get to an approval. We are not there yet, and I continue to have doubts that we can get there (due to the existing level of impairment in the creeks and the watershed), but I continue to be willing to consider the possibilities.

With that said, here are a few of my comments on the matrix:

**General Comment --**

At some point, we'll need to pull the separate matrix items together to form a comprehensive mitigation package. For example, the RDF, the stormwater facilities, the streamflow augmentation, and the retrofit

ECY00004310

AR 018847

issues all need to be coordinated and cannot conflict with one another.

### Specific Comments --

#### Item #3 --

- \* just to clarify... the buffer width is a 100' average on each side of the creek.
- \* along with the average width, we'll need to establish a minimum buffer width (e.g., something like "...the buffer shall be an average of 100' wide and at no point shall be less than 50' wide...").
- \* we should reconfirm with the Port that the mitigation sites and buffers will be subject to the condition in the previous 401 that established what activities and facilities can and can't occur in the mitigation and buffer areas.

#### Item #5 --

- \* just to clarify... the mitigation conditions that the Port and FAA work out need approval by Ecology.

#### Item #6 --

- \* the NW Ponds are waters of the state. I don't understand how this came to be a question -- we've told the Port several times in the past that they are waters of the state. The question we are dealing with is what kinds of impacts will occur at the ponds and what kind of mitigation is necessary.

#### Item #7 --

- \* I don't understand what is meant by "Port's discharge and mitigation is separated from RDF." Is the RDF a part of the Port's stormwater facilities and mitigation package? If yes, we need a design, impact analysis, mitigation, etc.; if not, we need the Port to address their stormwater and mitigation needs in another manner.

#### Item #8 --

- \* we should get a status report on the RDF design work. And, again, I'm not sure what is meant by "Port to endeavor to do our part to ensure mitigation for RDF can occur." -- we need more certainty than that. The phrase "endeavor to do our part" is not a defensible permit condition.

#### Item #10 --

- \* does this include Level 2 detention for the three new outfalls on Miller Creek? I believe they are all downstream from the existing Miller Creek detention areas.

#### Items #11 & 12 --

- \* I know we're deferring to the NPDES permit on many issues, but I have concerns about us defending a 401 approval of stormwater discharges that were shown to violate the standards (Lisa's analysis last year based on SeaTac data). I don't know that we can take the presumptive approach if we have data that shows the opposite of our presumption. In fact, I thought the main reason the Port was considering the WER and mixing zone approach (Item #14 below) was due to the known exceedances.

#### Item #13 --

- \* I didn't think retrofitting was still an issue -- Kevin? My understanding that it is required; it's just a question of how it should be scheduled.

#### Item #14 --

- \* we need to talk schedule on this point. I'll be reviewing the proposed project for compliance with the standards as they currently exist, and 401 conditions would be based on those standards. As stated previously, if the Port wants to use the WER approach establish mixing zones, we'll have to wait to make a 401 decision until after they are approved.

Item #15 --

\* Beneficial Uses: this item is key to our decision. It will be tough enough to argue that the proposed project and its mitigation will somehow result in a "net environmental benefit" to the creek, much less that it will meet the water quality standards. All the literature and data about watersheds and impervious surfaces that I'm aware of (general information as well as that specific to these watersheds) suggests the opposite will occur, even with the amount of mitigation that the Port has thus far proposed.

The Port does get mitigation credit for the riparian improvements, but those improvements have to be part of a complete mitigation package (including wetlands, riparian, streamflows, stormwater, etc.) that adequately addresses beneficial uses.

This issue is especially important, given the description in the Des Moines Creek Basin Plan that describes all the limiting factors that prevent the beneficial uses from being fully expressed. The Plan essentially describes a hydrologically "broken" stream system -- one in which the normally occurring 100-year flood flow happens every two years, where the significant erosive flows happen ten times more often than under pre-development conditions, where there is currently a 21% loss in average summer baseflow, with the anticipation of an additional 20% loss. Unless these factors are addressed, it will be difficult to argue that any project in the basin is going to result in the support of beneficial uses.

Item #16 --

\* clean fill criteria -- depending on what the Port is proposing (and Ecology is able to accept), this may result in the need for a solid waste permit from the local jurisdiction. The kinds of contaminated soils that I believe the Port is considering would likely be considered a "problem waste", and the runway area could be subject to landfill siting criteria. I'm not up on my solid waste regs, but we should at least give the Port a heads-up on this possibility.

Items #19 & 20 --

\* do we just need to discuss the status of these items or do we need to clarify what they mean? Also, it would be good to have the Corps present during this part of the meeting, since they have to deal with WSDOT/cumulative impacts issue.

Additional Item --

\* don't forget the public process! -- notice, hearing, comments... Any agreements we may reach with the Port are subject to change and additional review when we take this out for public review. Also, has the Port determined what they're going to do about SEPA?

That's it for now. Thanks for reading through this whole thing...

Tom L.

---Original Message---

From: Helwig, Raymond  
Sent: Thursday, May 13, 1999 11:30 AM  
To: Aboe, Sharon; Bolender, Wendy; Carr, Paul David; Ehlers, Paula; Fitzpatrick, Kevin; Glynn, John; Helwig, Raymond; Kenny, Ann; Langley, Ron; Luster, Tom; Nye, Roger; Rundlett, Mike; Stockdale, Erik; Stone, Bob; Stucki, Julianna; Thompson, Janet; Tom McDonald; White, Gordon  
Subject: FW: Updated 401 Permit Matrix

FYI to all. Primarily intended for those of you planning to attend the May 17, meeting.

---Original Message---

From: Cheyne, Michael [SMTP:cheyne.m@portseattle.org]  
Sent: Thursday, May 13, 1999 7:42 AM  
To: 'me461@ecy.wa.gov'  
Cc: Goodwin, Traci; Leavitt, Elizabeth; Hinkle, Barbara; Hubbard, Tom; Fitch, Jeff

**Subject: Updated 401 Permit Matrix**

**To All 5/12: Attached is the updated matrix that can act as an agenda for the Monday, May 17 meeting between the Port and Ecology.**

**If you have any difficulty in retrieving the attachment, please give me a call at 431-4994. The meeting is scheduled to start at 9:30 AM in the "Go" conference room at the Port's Project Management Offices located at 17900 International Blvd, Suite 301.**

**We are looking forward to this meeting. Please pass along this reminder and attached document to others that will be attending the meeting.**

**Thank you for your continued willingness to work through our many technical issues. Michael Cheyne**

**<<Permit matrix May12.doc>> << File: Permit matrix May12.doc >>**

Department of Ecology and Port of Seattle  
401 Water Quality Permit Discussions

Item #	Resolved	Description	Products	Status/Action Items
1		<p><b>WETLANDS AVOIDANCE</b></p> <p>Permanent/temporary impacts</p>	<ul style="list-style-type: none"> <li>Delineation report (4/30 to Corps)</li> <li>Corps delineation verification memorandum (Corps document)</li> </ul>	<ul style="list-style-type: none"> <li>16 - 18 acres of permanent impacts</li> <li>4 - 5 acres temporary impacts</li> <li>Bill Kleindl will meet with Corps the week of May 10.</li> </ul>
2		Creek relocation	<ul style="list-style-type: none"> <li>Wall/stream analysis (5/24)</li> </ul>	<ul style="list-style-type: none"> <li>Relocation of northern portion of Miller Creek with no 2<sup>nd</sup> relocation adjacent to the wall.</li> <li>Most of the stream buffer, located adjacent to the wall, is within a wetland area.</li> </ul>
3		Wall design and construction		<ul style="list-style-type: none"> <li>Construction of the wall will leave a 30' buffer to the stream during construction.</li> <li>Post wall construction, there will remain a 50' buffer at the wall.</li> <li><i>The buffer along entire stretch of creek will include an average of a 100' buffer post construction.</i></li> <li><i>Port feels that mitigation has been properly addressed to meet appropriate requirements.</i></li> </ul>
4		Borrow site and wetland impacts	<ul style="list-style-type: none"> <li>Wetland geotechnical report (5/7)</li> <li>Borrow sites</li> </ul>	<ul style="list-style-type: none"> <li>Borrow area #3 will be constructed as to avoid 2.3 acres of wetlands. Significant loss of fill (500,000 yds) and at cost to Port (approx. \$3 million)</li> <li>Borrow area #1 will include impacts to 1.3+ acres of wetlands.</li> </ul>

Note: The reevaluation document will include in the appendix the following documents: Ecological Assessment and Impact Analysis and the revised Mitigation Plan and delineation report.

ECY00004314

AR 018851

Revised May 12, 1999

Submitted by:

**RCAA**

DRAFT DELIBERATIVE MATERIAL

Department of Ecology and Port of Seattle  
401 Water Quality Permit Discussions

Item #	Resolved	Description	Products	Status/Action Items
5		Mitigation Plan	<ul style="list-style-type: none"> <li>Reevaluation document (5/28)</li> <li>Enhancements to existing 7,500' of Miller Creek as part of the Mitigation Plan (internal review 5/10)</li> </ul>	<ul style="list-style-type: none"> <li>Out of basin mitigation, for wildlife, is based on a 2 to 1 ratio.</li> <li>In basin wetland mitigation is based on a 1 to 1 ratio.</li> <li>980' of Creek will be displaced and replaced with 1080' of enhancements within the 7,500' buffer of the creek</li> <li>FAA approval is needed for the in basin re-vegetation plan, monitoring, management, and contingency plans. Port to draft language for permit condition.</li> </ul>
6		RUNWAY ANTI-ICING STUDY	<ul style="list-style-type: none"> <li>Metals report (4/5)</li> <li>Anti-icing report including sampling results showing no impact (6/30)</li> </ul>	<ul style="list-style-type: none"> <li>DOE review of D.O. results, with a turn around time for review of 3 weeks.</li> <li>The issue of NW ponds and the designation that these are not waters of the state issue needs resolution. May be moot point because NW ponds are to become RDF ponds.</li> <li><i>If agreed (tentative yes!) there is no impact, Ecology may consider no 401 condition.</i></li> </ul>

Department of Ecology and Port of Seattle  
401 Water Quality Permit Discussions

Item #	Resolved	Description	Products	Status/Action Items
7	✓	<p><b>WATER QUANTITY</b></p> <p>Des Moines Creek Design Standards</p>	<ul style="list-style-type: none"> <li>Comprehensive stormwater master plan (7/99)</li> </ul>	<ul style="list-style-type: none"> <li>Regional detention facility (RDF) will deal with impacts</li> <li>Discharges from Port property at Level 1 standards.</li> <li>Point of discharge from RDF will meet Level 2</li> <li>Port's discharge and mitigation is separated from RDF.</li> <li>Luster may have concerns over "provisional" nature of RDF commitments.</li> </ul>
8		Wetland mitigation and the RDF facility	<ul style="list-style-type: none"> <li>RDF design report (6/99)</li> </ul>	<ul style="list-style-type: none"> <li>Meeting with King County to coordinate wetland impacts and credits.</li> <li>Port to endeavor to do our part to ensure mitigation for RDF can occur.</li> </ul>
9		Des Moines Creek flow augmentation		<ul style="list-style-type: none"> <li>Des Moines Creek flow augmentation is a basin planning issue. Port will endeavor to ensure that RDF projects address this issue.</li> </ul>
10	✓	Miller Creek impacts	<ul style="list-style-type: none"> <li>Stormwater report</li> </ul>	<ul style="list-style-type: none"> <li>Port property is up to 10% of basin.</li> <li>The existing RDF provides for development impacts up to 10% development (PMX-clarify)</li> <li>All master plan development will meet Level 2</li> <li>New outfalls, estimated at 3, to Miller Creek will be confirmed.</li> </ul>

Department of Ecology and Port of Seattle  
401 Water Quality Permit Discussions

Item #	Resolved	Description	Products	Status/Action Items
11		WATER QUALITY Technology standards	<ul style="list-style-type: none"> <li>Individual outfall report and analysis</li> </ul>	<ul style="list-style-type: none"> <li>Master plan facilities will meet treatment requirements per Puget Sound Storm Water Manual 1.2.8</li> <li>Run off treatment BMPs</li> <li>Determine if existing outfalls meet standard BMPs</li> </ul>
12	✓	"Maximum extent practicable"		<ul style="list-style-type: none"> <li>The DOB and the Port agree that when we agreed on the concept that "maximum extent practicable" of applying technology standards equals compliance with the Puget Sound manual, which is AKART for treatment BMPs. If this is agreed, then the use of WER and mixing zones are appropriate.</li> </ul>
13		Retrofit existing airfield	<ul style="list-style-type: none"> <li>Ecology internal determination of NPDES/401 issues</li> </ul>	<ul style="list-style-type: none"> <li>Determine how to deal with existing facilities.</li> <li>Develop schedule to implement BMPs.</li> <li>Determine if redevelopment triggers retrofit of existing airfield.</li> <li>Determine NPDES/401 issues</li> </ul>
14		WER and Mixing zones	<ul style="list-style-type: none"> <li>WER outline (complete)</li> <li>Outline submitted -- POS has requested approval</li> <li>Mixing zone approach submitted POS has requested approval</li> </ul>	<ul style="list-style-type: none"> <li>Arrange mixing zone meeting</li> </ul>



Department of Ecology and Port of Seattle  
401 Water Quality Permit Discussions

Item #	Resolved	Description	Products	Action Items
15		<b>BENEFICIAL USE</b> Fish spawning, recreation, water supply	<ul style="list-style-type: none"> <li>Highlights of all activities that the Port has or will accomplish to demonstrate benefits (5/17)</li> </ul>	<ul style="list-style-type: none"> <li>Determine the extent that the basin plan will address these issues</li> <li>Determine appropriate level of responsibility for Port to mitigate for impacts/loss of uses by others.</li> <li>Acknowledge that the Port is doing the right thing. can demonstrate net benefits to creeks.</li> <li>If there are impacts there is a need to determine actions. Ecology looking for Port to best we can to bring back some beneficial uses.</li> </ul>
		<b>OTHER ITEMS</b>		
16		Clean fill criteria	<ul style="list-style-type: none"> <li>Port guidelines</li> </ul>	<ul style="list-style-type: none"> <li>75% Completed-criteria under discussion</li> </ul>
17		FTE/agreed order		<ul style="list-style-type: none"> <li>Ecology to complete</li> </ul>
		<b>NEW ITEMS</b>		
18		Timing of 401 certification	<ul style="list-style-type: none"> <li>Discussion regarding review time lines</li> </ul>	<ul style="list-style-type: none"> <li>New item for discussion</li> </ul>
		<b>FOLLOW-ON MEETINGS</b>		
19		King County and the Port		<ul style="list-style-type: none"> <li>Determine the design of the RDF</li> <li>Coordinate the construction of the RDF and the Port's wetland mitigation</li> <li>Explore WSDOT impacts</li> <li>Discuss wetlands and flow augmentation</li> </ul>
20		Department of Ecology and the Port		<ul style="list-style-type: none"> <li>Discuss mitigation plan</li> <li>Discuss existing BMPs and retrofit issues</li> <li>Discuss MTCA fill criteria</li> </ul>

**Luster, Tom**

---

**From:** Hellwig, Raymond  
**Sent:** Wednesday, May 12, 1999 11:57 AM  
**To:** Luster, Tom; Stockdale, Erik  
**Cc:** Ehlers, Paula  
**Subject:** RE: FYI - airport-related article

Submitted by:

**RCAA**

Regional Commission on Airport Affairs

Thanks Tom, very interesting and relevant.

I look forward to seeing the draft agreement for Ecology, the POS and the FAA that Barbara H. was going to put together. You are right, the details will be critical.

Note: Regarding the last sentence in your intro comments below re "no" not being an acceptable option. Yes, we are looking for creative and regulatorily appropriate ways to get to "yes", but we still may not be able to reach agreement with the POS on what goes into those "ways". Therefore, the "no" option is still alive - always has been. Our goal has been to be straight forward about our environmental objectives and how we think the law should apply to the POS project. Essentially, we offered to help the POS understand what it would take to come up with options for their project that would be defensible within the framework of the law. If the POS can't find a way to do that, for whatever reason - economic, political etc., they could be looking at a "no".

Thanks again for the article.

—Original Message—

**From:** Luster, Tom  
**Sent:** Wednesday, May 12, 1999 11:15 AM  
**To:** Hellwig, Raymond; Stockdale, Erik  
**Cc:** Ehlers, Paula  
**Subject:** FYI - airport-related article

Hi Ray and Erik --

Just found the following article about a wetland, an airport, and the FAA...

The situation seems similar to ours -- how to do wetland mitigation in the flight path of an airport. It appears that the solution in this case was to allow the compensatory wetlands to be built using a design that will minimize the bird attractions, and to require a contingency measure if the created wetlands prove to be a hazard. The article doesn't go into detail, but I assume there is some sort of monitoring for bird use and associated hazards.

Hopefully, we'll find out Monday what the Port will propose, but we may be able to use an approach similar to that described in the article:

- \* determine what in-basin mitigation is adequate;
- \* agree on what kind of monitoring is needed to determine if there is "hazardous bird use", and establish an "action threshold" to determine whether changes are needed in the wetland;
- \* define what type of management options can (and can't) be used if changes to the wetlands are necessary (e.g., vegetation management, changes to structures that regulate hydrology, etc.); and,
- \* have a contingency plan in place that includes other in-basin wetland opportunities that would be developed if the existing mitigation proves hazardous and cannot be managed for safety.

Assuming this approach is acceptable, there will be a number of devilish details to work out, of course. If we go this route, the 401 will need to include a great deal of certainty about the above points -- specific locations of contingency sites, when the contingency would kick in, which management options can and can't be used, etc.

And my usual caveat -- this project will result in significant impacts to two already significantly impacted watersheds. In order for us to approve it under 401, we will need rigorous and specific conditions to ensure that beneficial uses are maintained and protected. Based on the regs and the literature, it would be easier and more justifiable under 401 to deny the project because of the scope and extent of the project's impacts and the current conditions in the waterbodies. However, since "no" is not seen as an acceptable option, we are looking for creative and regulatorily appropriate ways to get to "yes" -- this approach may provide one of those ways.

Tom L.

---

### **Wetlands to remain in Cross Creek**

May. 12, 1999

By TOBIAS YOUNG  
Press Democrat Bureau

**PETALUMA --** Seasonal wetlands will remain in the path of airplanes landing at Petaluma's municipal airport, but proposed ball fields on the site have been rejected, according to an agreement announced Tuesday by Petaluma City Manager Fred Stouder.

The wetlands are a provision of the nearly completed Cross Creek subdivision and came into question when Federal Aviation Administration officials discovered they were planned near the airport. But Stouder said an agreement reached with FAA officials will allow the development to move ahead and the wetlands to stay, as long as the area doesn't attract birds and become a collision hazard to airplanes.

If the wetlands are declared a threat by the FAA within five years, developer Doyle Heaton has agreed to buy a replacement site and create new wetlands.

Under the new agreement, the ball fields, also a condition of the subdivision, will be relocated to public property elsewhere in the city because the FAA and council members are concerned about the risk posed to children and parents congregating under the path of planes landing at the airport.

Stouder on Tuesday lifted a two-week-old stop-work order, giving Heaton the OK to finish the final phase of his 200-home development. Stouder said Heaton, who owns Concord-based Mardell LLC, was expected to start grading as soon as today to try to finish the final 40 homes this year.

Three years ago, Heaton got approval for the Cross Creek subdivision by promising a 48-acre park, ball fields and the creation of new wetlands in exchange for sacrificing part of a greenbelt on the eastern edge of town. But earlier this year the FAA and a new City Council raised safety concerns about the fields and wetlands.

"I feel the last several weeks were spent clarifying an issue that proved not to be a problem," Stouder said.

The agency consented to the project in a May 10 letter from FAA District Office Manager John Pfeifer. He asked the city to limit the amount of runoff the seasonal wetlands will hold and reduce the amount of vegetation in order to lower the attraction for birds.