

**Kenny, Ann**

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**From:** Kenny, Ann  
**Sent:** Sunday, July 29, 2001 2:43 PM  
**To:** Hellwig, Raymond; Fitzpatrick, Kevin; Drabek, John; Wang, Ching-Pi; Stockdale, Erik; Marchioro, Joan (ATG); Young, Tom (ATG); 'Katie Walter'; 'Kelly Whiting'  
**Cc:** Summerhays, Jeannie  
**Subject:** Deliberative: Do Not Disclose, Preliminary Draft 401 WQC for Third Runway  
**Importance:** High

Dear 401 Team:

Attached is a Preliminary 401 WQC certification. It is still very rough but given the time constraints ahead of us I want to get this to you so that you can start looking it over and provide me with feedback.

The stormwater related sections will require the most work at this point. Some of the language in this draft permit is from the old permit, some is from the Tacoma Narrows 401. We need to be sure that the 401 will be well integrated with the 402, the major mod. and future 402 permits.

I am waiting for additional conditions from Katie that relate to the NRMP. The Port is supposed to be submitting revised performance standards sometime Monday.

We are still reviewing low flow material and more low flow materials are expected to come in this coming Tuesday so we will not be able to work much on this section in the next couple of days.

In the meantime, please send me your comments or call if you aren't sure why something is or isn't in here.

Thanks for all your help.

Ann



DraftWQC .doc

Ex. # 446

**DRAFT**  
**DELIBERATIVE: DO NOT DISCLOSE**

August X, 2001

**REGISTERED MAIL**

Port of Seattle  
17900 International Blvd., Suite 402  
Seattle-Tacoma International Airport  
SeaTac, WA 98188-4236  
Attn: Ms. Elizabeth Leavitt

Dear Ms. Leavitt:

Re: Water Quality Certification for U.S. Army Corps of Engineers Public Notice 1996-4-02325: Construction of a Third Runway and related projects at the Seattle-Tacoma International Airport (STIA) in the Miller, Walker, and Des Moines Creek watersheds and in wetlands at the Seattle-Tacoma International Airport, located within the vicinity of the city of SeaTac, King County, Washington; and in wetlands at the mitigation site in Auburn, King County, Washington.

The public notice from the U.S. Army Corps of Engineers for proposed work has been reviewed. On behalf of the state of Washington, we certify that the work proposed in the Port of Seattle's revised JARPA application dated October 25, 2000, the U.S. Army Corps of Engineer's public notice and the Department of Ecology's public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of state law. This letter also serves as the state response to the U.S. Army Corps of Engineers.

Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the Port of Seattle's certification that this work is consistent with the approved Washington State Coastal Zone Management Program. This concurrence is based upon the Port of Seattle's compliance with all applicable enforceable policies of the Coastal Zone Management Program, including Section 401 of the Federal Water Pollution Control Act.

Work authorized by this certification is limited to the work described in the October 25, 2000, Joint Aquatic Resource Permit Application (JARPA), the U.S. Army Corps of Engineer's Public Notice, and the plans submitted by the Port to the Department of Ecology for review and approval.

This certification shall be withdrawn if the U.S. Army Corps of Engineers (Corps) does not issue a Section 404 permit. It shall also be withdrawn if the project is revised in such a manner or purpose that the Corps or Ecology determine the revised project must obtain new authorization and public notice. The Applicant will then be required to reapply for state certification under Section 401 of the Federal Clean Water Act.

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This certification is subject to the conditions contained in the enclosed Order and to the water quality and aquatic resource related conditions of the following permits and approvals:

- Hydraulic Project Approval #00-XXXX-XX to be issued by the Washington State Department of Fish & Wildlife (WDFW).
- NPDES permit #WA-002465-1, issued by the Department of Ecology on February 20, 1998 and modified on XXXX.

If you have any questions, please contact Ann Kenny at (425) 649-4310. Written comments can be sent to her at the Department of Ecology, Northwest Regional Office, 3190 160<sup>th</sup> Avenue SE, Bellevue, Washington, 98008-5452. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Gordon White, Program Manager  
Shorelands and Environmental Assistance Program

GW:AK  
Enclosure

cc: Michelle Walker, Corps of Engineers  
Gail Terzi, Corps of Engineers  
Tony Opperman, WDFW  
Tom Sibley, NMFS  
Nancy Brennan-Dubbs, USFWS  
Joan Cabreza, EPA

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**DRAFT  
DELIBERATIVE: DO NOT DISCLOSE**

**IN THE MATTER OF GRANTING A  
WATER QUALITY CERTIFICATION  
AND SHORT-TERM WATER QUALITY  
MODIFICATION TO:**

the Port of Seattle, in accordance with 33  
U.S.C. 1341 FWPCA § 401, RCW 90.48.260  
and WAC 173-201A.

**ORDER #1996-4-02325**

Construction of a Third Runway and related projects. Components of the project include construction of a 8,500-foot-long third parallel runway with associated taxiway and navigational aids, establishment of standard runway safety areas for existing runways, relocating S. 154<sup>th</sup> Street north of the extended runway safety areas and the new third runway, development of the South Aviation Support Area and the use of on-site borrow sources for the third runway embankment.

**TO:** Port of Seattle  
Seattle-Tacoma International Airport  
Attn: Elizabeth Leavitt  
17900 International Blvd., Suite 402  
SeaTac, WA 98188-4236

The Port of Seattle (Port) requested a water quality certification from the state of Washington for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401). The request for certification was made available for public review and comment through the U.S. Army Corps of Engineer's Second Revised Public Notice No. 1996-4-02325 dated December 27, 2000 as amended by the Corps' Amendment and Erratum to the Second Revised Public Notice dated January 17, 2001.

The Third Runway site and related Master Plan Update projects and on-site mitigation are located in Sections 4, 5, and 9, Township 22N, Range 4E and Sections 20, 21, 28, 29, 32, 33, Township 23 N, Range 4E in King County. Offsite mitigation will be located in Section 31, Township 22N, Range 5E in King County. The project area, on-site mitigation and the proposed offsite mitigation are located within Water Resource Inventory Area 9. The project is described in detail in the December 27, 2000 Public Notice issued by the U.S. Army Corps of Engineers, the October 25, 2000 Joint Aquatic Resource Permit Application and in the plans approved by the Department of Ecology as a part of this Order.

For purposes of this Order, the term "Applicant" shall mean Port of Seattle (Port) and its agents, contractors.

Work authorized by this Order is limited to the work described in the October 25, 2000, Joint Aquatic Resource Permit Application (JARPA), as amended, unless modified by other permit conditions.

**AUTHORITIES:**

In exercising authority under 33 U.S.C. 1341 and RCW 90.48.260, Ecology has investigated this application pursuant to the following:

- A. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment

**AR 022793**

effluent limitations as provided under 33 U.S.C. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 302, 303, 306, and 307);

- B. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; and,
- C. 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:**

In view of the foregoing and in accordance with 33 U.S.C. 1341, 90.48.260 RCW and Chapter 173-201A WAC, certification is granted to Port of Seattle, (PORT ) subject to the following conditions:

**A. Water Quality Standard Conditions:**

Des Moines Creek (XXX), Miller Creek (XXX) and Walker Creek (XXX) are Class AA waters of the state. Certification of this proposal does not authorize the Port to exceed applicable state water quality standards (173-201A WAC) or sediment quality standards (173-204 WAC). Water quality criteria contained in 173-201A-030(1) WAC and 173-201A-040 WAC shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in 173-201A-110(3), except as outlined below in condition A1. Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

Des Moines Creek has been identified on the current 303(d) list as exceeding state water quality standards for fecal coliform. This project shall not result in further exceedances of this standard. [double check 303(d) list]

**1. Short-term Modification to the Water Quality Standards. [Miller Creek relocation, removal of creosote-treated bulkhead/bridge?]**

The construction of Outfall #8 and some of the dredging and disposal work may cause water quality effects that will exceed the state water quality criteria specified in WAC 173-201A. Per WAC 173-201A-110, Ecology may grant a Modification to the Standards to allow for exceedances of the criteria on a short-term basis when necessary to accommodate essential activities. The Narrows is classified as Class AA and thus the criteria of that class apply except as specifically modified below:

- a) Mixing zones can be authorized to allow for temporary exceedances of certain water quality standards in state waters immediately adjacent to a permitted project. A 300-foot radial/600-foot downcurrent mixing zone is authorized for construction of Outfall #8 and dredging activity and a 300-foot radial mixing zone is authorized for the dewatering of the barges at select anchor points. Within the mixing zones, the Class AA standard for turbidity is waived. The Class AA standard for dissolved oxygen may be exceeded but shall not drop below 5.0 mg/l. All other applicable water quality standards shall remain in effect within the mixing zones and all water quality standards are to be met outside of

the authorized mixing zones.

- b) This modification shall remain in effect for the entire duration of time necessary to complete construction of Outfall #8 and dredging and disposal operations. However, the waiver of specified standards within the mixing zones is intended for brief periods of time (such as a few hours) and is not an authorization to exceed those standards for the entire duration of construction. In no case does the waiver authorize degradation of water quality that significantly interferes with or becomes injurious to characteristic water uses or causes long-term harm to the environment. Nor does this modification authorize work during closure periods specified by WDFW in the HPA permit.

**B. Timing Requirements:**

1. This Order shall be valid during construction and long-term operation and maintenance of the project.
  - a) The Applicant shall reapply with an updated JARPA if seven years elapse between the date of the issuance of this Order and completion of the project construction and/or discharge for which the federal license or permit is being sought.
  - b) The Applicant shall submit an updated application to Ecology if the information contained in the October 25, 2000 JARPA is altered by subsequent submittals to the federal agency and/or state agencies. Within 30 days of receipt of an updated application Ecology will determine if a modification to this Order is required.
  - c) Any future construction-related activities that could impact waters of the state at this project location, emergency or otherwise, that are not defined in the October 25, 2000 JARPA, this Order, or have not been approved in writing by Ecology, are not authorized by this Order. Such proposed actions shall be reviewed with Ecology for approval prior to implementation.
2. In-water work is subject to a fishery closure window described in Washington State Department of Fish and Wildlife's (WDFW) Hydraulic Project Approval (HPA). Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by WDFW that fisheries resources may be adversely affected.

**C. Notification and Reporting Requirements:**

1. Notification shall be made to Ecology's Federal Permit Manager at 425-649-4310, 425-649-7098 (Fax), mail: 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008 or by e-mail at aken461@ecy.wa.gov for the following activities:
  - a) at least 30 days prior to the pre-construction meeting to go over environmental permits,
  - b) at least 10 days prior to starting construction at the project site or any mitigation site, and
  - c) within 7 days after the completion of construction of each of the projects identified in Table A-3 (CSMP, Volume 2) and each of the mitigation sites identified in the NRMP.

**NOTE:** These notifications shall include the applicant's name, project name, project location, the number of this Order, contact and contact's phone number.

2. The Applicant shall ensure that all appropriate Project Engineer(s) and the Lead Contractor(s) at the project site and/or mitigation sites have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order.
  - a) The Applicant shall provide to Ecology a signed statement (see Attachment X for an example) from each Project Engineer(s) and Lead Contractor(s) that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals.
  - b) These statements shall be provided to Ecology no less than seven (7) days before each Project Engineer or Lead contractor begins work at the project or mitigation sites.
3. All reports, plans, or other information required to be submitted by this Order shall be submitted in triplicate to Ecology's Federal Permit Manager, Third Runway, at 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452.
4. Documents required to be submitted to Ecology for review and/or approval by this Order shall be submitted to Ecology by the time specified in this order. Failure to submit documents by the required time may result in the revocation of this Order. The Port may, on a case-by-case basis, submit a written request for an extension of the specified submittal deadline for a document. Ecology will consider the reasonableness of the request for an extension and may grant an extension for a period of time it deems appropriate.

D. **Wetland, Stream and Riparian Mitigation:** Mitigation for this project shall be completed as described in the following documents with the following additions and clarifications:

- the Final Natural Resource Mitigation Plan, Master Plan Update Improvements, STIA, dated December 2000.
- Appendixes A-E, Design Drawings, Natural Resource Mitigation Plan, STIA, dated December 2000.
- the Revised Grading and Planting Plan for the Auburn Wetland Mitigation site dated June 28, 2001.
- the revised performance standards received xxx. 2001
- the revised Borrow Site Three plan sheets and drawings prepared by HartCrowser dated June 2001 and received by Ecology on June 18, 2001.

The above documents are modified as follows:

Performance Standards: Mitigation efforts shall be monitored for compliance with the performance standards referenced on pages XXX of the Mitigation Plan. If the results of monitoring at Year 5 show that the mitigation sites and buffer areas do not have at least 80% coverage of native vegetation or that other performance standards set forth in the mitigation plan have not been met, additional monitoring and mitigation may be required (e.g., replanting, soil amendments, additional mitigation area, etc.). Any additional monitoring or mitigation measures are subject to review and approval by Ecology.

Contingency measures and additional monitoring of the mitigation areas may be required by Ecology if wetland monitoring reveals that vegetation establishment or wildlife use of the wetland is not sufficient to meet the success standards. Additional monitoring may be required beyond the 15-year period if mitigation success is not achieved within the 10-year monitoring period.

Additional conditions:

The wetland mitigation planting plan shall be field inspected by Parametrix, Inc. or another qualified consultant(s) during construction and planting to ensure proper installation.

The boundaries of the mitigation area and buffers shall be permanently marked with stakes at least every 100 feet or with construction fencing. The marking shall include signage that clearly indicates that mowing and fertilizer/pesticide applications are prohibited within mitigation areas.

The Department of Ecology or its designee, upon reasonable notice, shall be allowed access to all mitigation sites for the entire monitoring period.

Restrictive Covenants: The Port has proposed deed restriction language (Appendix X ??). [Joan: add the appropriate language. When and how are these going to be filed. If we require additional wetland mitigation we need to add language to the restrictive covenants to cover the new area—require submittal of revised covenants by X date.]

Any changes to the restrictive covenants shall require written approval by the Department of Ecology.

Violation of any term of the restrictive covenants shall be considered a violation of this Order. Ecology may require corrective action sufficient to cure the violation, including without limitation, restoring or remediation of the covenant areas, or removal of any structure, development, or improvement not permitted by the covenant. In addition, Ecology may bring an action to specifically enforce the covenant, to enjoin the violation of the covenant, to require restoration or remediation of the covenant area, or to levy a penalty against the Port or any other party for the violation.

Submittal of a revised mitigation plan: The Port shall submit a revised NRMP which includes the changes or additions required by this Order for review and approval no later than November 30, 2001. The revised NRMP shall include revised plan sheets that address the corrections required in Attachment X.

A Final Natural Resource Mitigation Plan shall be prepared and submitted to Ecology no later than December 31, 2001. The Final Natural Resource Mitigation Plan shall include any changes required by the U.S. Army Corps of Engineers.

If the Port submits a revised Natural Resource Mitigation Plan to the U.S. Army Corps of Engineers for review subsequent to receipt of this Order, the Port shall simultaneously submit the same Revised NRMP to Ecology for review and approval. No fill shall be placed in waters of the state until the Revised NRMP submitted to the U.S. Army Corps of Engineers has been approved by Ecology.



DX. Mitigation for Temporary Impacts

The Final Natural Resource Mitigation Plan (NRMP) (December 2000) indicates that up to 2.05 acres of wetlands will be affected by the construction of temporary stormwater management ponds and other construction impacts (p. 4-8 and other). Approximately 1.25 acres will result from the construction of the stormwater ponds. Ecology has determined that the impacts characterized as "temporary" in the NRMP are not temporal in nature because they will last for longer than a one-year period. The agency considers these impacts to be permanent and has determined that additional in-basin mitigation is necessary in the Miller Creek basin. Additional mitigation is necessary in order to mitigate for hydrologic, water quality and general habitat impacts that will result from the "temporary" impacts.

In order to compensate for these unmitigated impacts, the Port shall amend the NRMP as follows:

- The wetland/riparian zone comprised of wetland A17b/c/d and water D will be added to the wetland and buffer restoration/enhancement on Miller Creek. This area is depicted in Attachment X titled "Wetland A17 complex". A 100-foot buffer will be placed to envelop this system. The wetlands total 2.64 acres and "Water D" totals 0.16 acres for a combined total of 2.80 acres (not including the buffer). The buffer will be averaged, similar to the buffer on Miller Creek.
- The Port shall develop a mitigation plan for this additional area and incorporate it into the NRMP. The plan shall use the same goals and performance standards as the NRMP approved by this Order.
- The plan will evaluate the feasibility of improving the hydrologic connection of wetland A17 complex to Miller Creek via "Water D". If it is feasible to improve the hydrologic connection of wetland A17 complex to Miller Creek via "Water D", the Port shall include a plan for improving the connection in its submittal.
- Homes, driveways, concrete, fill, septic systems and other unsuitable material will be removed from the wetland complex, in a manner that meets the treatment protocol established for the Miller Creek restoration in the NRMP.
- The plan will develop a buffer restoration and revegetation plan for this area, that meets the treatment protocol for the Miller Creek restoration in the NRMP. This will include the removal of invasive species, and replanting of appropriate native species.
- The plan will evaluate the potential for wetland restoration and enhancement within this new mitigation zone.
- The buffer will be joined with the buffer on Miller Creek to the south.
- A restrictive covenant will be drafted for this additional mitigation area. The restrictive covenant shall be consistent with other restrictive covenants established for this project.
- A conceptual plan shall be submitted to Ecology for review and approval no later than September 30, 2001 for review.

D2. Wetland, stream and riparian mitigation monitoring and reporting:

- a) Monitoring of all wetland mitigation sites identified in the December 2000 Natural Resource Mitigation Plan and the June 2001 Auburn Grading and Planting Plan shall be completed as described in the final wetland mitigation plan except as revised by the following conditions:
  - 1) Monitoring shall be completed at least yearly for a fifteen-year period. If after the initial monitoring efforts the results show that the success criteria established in the plan are not being met, Ecology may require additional monitoring and/or mitigation.
  - 2) The Applicant shall prepare and submit annual monitoring reports to Ecology's, **Federal Permit Manager, Northwest Regional Office, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452** no later than December 30 of each year following the first year of the mitigation site work. Each year's monitoring report shall include photographic documentation of the project taken from permanent reference points.
  - 3) "As-Built" Report: An as-built report documenting the final design of the mitigation site shall be prepared when the initial planting is completed. The report shall include the following:
    - ❖ final site topography;
    - ❖ photographs of the area taken from established permanent reference points;
    - ❖ a planting plan showing species, densities, sizes, and approximate locations of plants, as well as plant sources and the time of planting;
    - ❖ habitat features (snags, large woody debris, etc) and their locations;
    - ❖ drawings in the report shall clearly identify the boundaries of the project;
    - ❖ locations of sampling and monitoring sites; and
    - ❖ any changes to the plan that occurred during construction.
  - 4) The "As Built" report shall be sent to Ecology's Federal Permit Manager within 60 days of completing the mitigation site.
- b) Any changes to the wetland mitigation monitoring plan must be approved in writing by Ecology prior to implementing any changes.

**E. Conditions for Acceptance of Fill to be used in construction of the third runway and associated projects:**

**E1. Borrow Sites**

The use of imported fill for the proposed Third Runway embankment may result in impacts to wetlands or other waters of the state. To ensure compliance with measures designed to minimize potential impacts, the Port of Seattle shall submit borrow site clean fill certification documentation described in the following sections to the Department of Ecology for review and approval prior to fill placement.

**E2. Fill Source/Documentation/Fill Criteria**

The Port of Seattle shall adhere to the following conditions to ensure that the fill placed for the

proposed Third Runway embankment does not contain toxic materials in toxic amounts.

**E2a. Fill Sources**

Fill materials for the proposed Third Runway embankment or other Master Plan Update projects shall be limited to the following three sources:

- State-certified borrow pits
- Contractor-certified construction sites
- Port of Seattle-owned properties.

**E2b. Documentation**

No later than two (2) business days prior to the acceptance of fill materials for the proposed Third Runway embankment, the Port of Seattle shall submit to the Department of Ecology's Northwest Regional Office, Water Quality Program, for review and approval clean fill certification documentation for the proposed fill source. The documentation shall contain an environmental assessment of the fill source and shall verify excavated soil from the proposed fill source complies with the fill criteria. The environmental assessment shall be conducted by an environmental professional in general conformance with the American Society for Testing and Materials Standard (ASTM) E 1527-00 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, and E 1903-97 Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process. At minimum, the document shall contain the followings:

1. **Fill Source Description:** Provide a description/location of the fill source, general characteristics of the fill source and vicinity, current use, and a site plan identifying the extent of the excavation, project schedule and the estimated quantity of fill to be transported to the proposed Third Runway embankment or other Master Plan Update projects.
2. **Records Review:** Obtain and review environmental records of the proposed fill source site and adjoining properties. In addition to the standard federal and local environmental record sources, the following Department of Ecology environmental databases shall be reviewed:
  - Confirmed & Suspected Contaminated Site Report
  - No Further Action Site List
  - Underground Storage Tank List
  - Leaking Underground Storage Tank List
  - Site Register.

Records review shall also contain historical use information of the fill source and the surrounding area to help identify the likelihood of environmental contamination.

3. **Site Reconnaissance:** Conduct a site visit to identify current site use and site conditions to help identify the likelihood of environmental contamination and/or the potential migration of hazardous substances onto the site from adjoining properties.

Basis: ASTM E 1527-00 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.

4. Fill Source Sampling: Collect and analyze fill materials for the potential contaminant(s) identified in the Phase I Environmental Site Assessment. At a minimum, fill materials from each fill source shall be analyzed for the following hazardous substances.
- Total Antimony
  - Total Arsenic
  - Total Beryllium
  - Total Cadmium
  - Total Chromium<sup>1</sup>
  - Total Copper
  - Total Lead
  - Total Mercury
  - Total Nickel
  - Total Selenium
  - Total Silver
  - Total Thallium
  - Total Zinc
  - NWTPH-HCID

**Basis:** The listing of metals proposed for the fill criteria is based on 40 CFR Part 122 Appendix D Table III, Other Toxic Pollutants (Metals and Cyanide) and Total Phenols. These metals are required monitoring parameters for the Seattle-Tacoma International Airport's NPDES permit. The proposed minimum sampling program also incorporates a screening requirement for total petroleum hydrocarbons in keeping with the Port's NPDES permit requirements and also because petroleum contaminants are often found in current/former industrial areas (waiting for permit information from Ms. Tricia Miller, NWRO/WQP, to confirm the stated basis).

<sup>1</sup> Chromium (VI) shall be analyzed if the results of the Phase I Environmental Site Assessment show a likelihood of Chromium (VI) contamination.

**Basis:** The chromium (VI) sampling requirement is in accordance with Mr. Charles San Juan's (Ecology TCP) recommendation.

For fill source characterization, the following table presents the minimum sampling schedule for fill sources with no likelihood of environmental contamination.

Cubic Yards of Soil	Minimum Number of Samples
<1,000	2
1,000 - 10,000	3
10,000 - 50,000	4
50,000 - 100,000	5
>100,000	6

**Basis:** The fill source sampling schedule is as proposed by the NWRO/WQP. The Toxics Cleanup Program has provided guidance for the sampling of petroleum-contaminated soil stockpiles (Publication Number 91-30). The guidance recommended a much higher sampling schedule than as proposed in the fill criteria. For example, for a 200,000-cubic yard stockpile, the Toxics Cleanup Program guidance recommended a minimum number of 226 samples as compared to six samples as proposed above. In the absence of Ecology guidance for the sampling of borrow sites, the fill source sampling schedule will be as proposed by the NWRO/WQP.

Samples shall be collected at locations that are representative of the fill destined for the proposed Third Roadway embankment or other Master Plan Update projects.

For fill sources with suspected contamination identified by the Phase I Environmental Site Assessment or with complex site conditions, the Port shall consult with the Department of Ecology Northwest Regional Office, Water Quality Program, for the appropriate sampling requirements.

**E2c. Fill Criteria**

The results of the Phase II Environmental Site Assessment sampling and testing shall be compared to the fill criteria to determine the suitability of the fill source for the proposed Third Runway embankment. Presented in the following table is the fill criteria established for hazardous substances specified in Section E7b.4.

Hazardous Substances	Fill Criteria mg/kg <sup>2</sup>
Antimony	16
Arsenic	20
Beryllium	0.6
Cadmium	2
Chromium <sup>3</sup>	42/2000
Copper	36
Lead <sup>4</sup>	220/250
Mercury	2
Nickel <sup>5</sup>	100/110
Selenium	5
Silver	5
Thallium	2
Zinc	85
Gasoline	30
Diesel <sup>6</sup>	460/2000
Heavy Oils	2000

<sup>2</sup> mg/kg = milligrams per kilogram

<sup>3</sup> Fill with total chromium concentrations greater than 42 mg/kg and less than 2000 mg/kg may be placed to within six feet of the ground surface. No fill with total chromium concentrations greater than 42 mg/kg may be placed within the first six feet of the embankment. No fill with chromium (VI) concentrations greater than 19 mg/kg may be placed within the embankment.

Basis: The six feet limitation is based on WAC 173-340-7492 (2)(c)(ii).

<sup>4</sup> Fill with total lead concentrations greater than 220 mg/kg and less than 250 mg/kg may be placed to within six feet of the ground surface. No fill with total lead concentrations greater than 220 mg/kg may be placed within the first six feet of the embankment.

<sup>5</sup> Fill with total nickel concentrations greater than 100 mg/kg and less than 110 mg/kg may be placed to within six feet of the ground surface. No fill with total nickel concentrations greater than 100 mg/kg may be placed within the first six feet of the embankment.

<sup>6</sup> Fill with diesel range organics concentrations greater than 460 mg/kg and less than 2000 mg/kg may be placed to within six feet of the ground surface. No fill with diesel range organics concentrations greater than 460 mg/kg may be placed within the first six feet of the embankment.

Fill Criteria:

**Antimony – 16 mg/kg:** The calculated Method B soil cleanup level for ground water protection is 6 mg/kg. The calculated Method B soil cleanup level for surface water protection is 1450 mg/kg. There is no terrestrial ecological evaluation soil concentration for this metal. The *proposed* fill criterion is based on the practical quantitation limit of 16 mg/kg. The use of practical quantitation limit as the criterion is based on WAC 173-340-700 (6)(d).

**Arsenic – 20 mg/kg:** This is the Method A soil cleanup level for unrestricted land uses (Table 740-1).

**Beryllium – 0.6 mg/kg:** The calculated Method B soil cleanup level for ground water protection is 0.01 mg/kg. This is higher than the natural background concentration in Puget Sound soil. The proposed fill criterion is based on the natural background concentration of 0.6 mg/kg in Puget Sound soil. The use of natural background as the criterion is based on WAC 173-340-700 (6)(d).

**Cadmium – 2 mg/kg:** This is the Method A soil cleanup level for unrestricted land uses (Table 740-1).

**Chromium (Total) – 42 mg/kg:** This is the terrestrial ecological evaluation soil concentration (Table 749-2). This criterion applies to the first six feet of the Third Runway embankment. The terrestrial ecological evaluation soil concentration requirement is based on WAC 173-340-7492.

**Chromium (VI) – 19 mg/kg:** This is the Method A soil cleanup level for unrestricted land uses. This criterion applies throughout the embankment.

**Chromium (III) – 2000 mg/kg:** This is the Method A soil cleanup level for unrestricted land uses. This criterion applies for the embankment to within six feet of the ground surface.

**Copper – 36 mg/kg:** The calculated Method B soil cleanup level for surface water protection is 3 mg/kg. The proposed fill criterion is based on the natural background concentration of 36 mg/kg in Puget Sound soil. The use of natural background as the criterion is based on WAC 173-340-700 (6)(d).

**Lead – 220/250 mg/kg:** The terrestrial ecological evaluation soil concentration is 220 mg/kg (Table 749-2). This criterion applies to the first six feet of the Third Runway embankment. The 250 mg/kg criterion is the Method A soil cleanup level for unrestricted land uses (Table 740-1). This criterion applies for the embankment to within six feet of the ground surface.

**Mercury – 2 mg/kg:** This proposed fill criterion is the Method A soil cleanup level for unrestricted land uses (Table 740-1). This value is less than the terrestrial ecological evaluation soil concentration of 9 mg/kg (Table 749-2).

**Nickel – 100/110 mg/kg:** The terrestrial ecological evaluation soil concentration is 100 mg/kg (Table 749-2). This criterion applies to the first six feet of the Third Runway embankment. The 110 mg/kg criterion is the calculated Method B soil cleanup level for surface water protection. This criterion applies for the embankment to within six feet of the ground surface.

**Selenium – 5 mg/kg:** The calculated Method B soil cleanup level for surface water protection is 0.5 mg/kg. The terrestrial ecological evaluation soil concentration is 0.8 mg/kg (Table 749-2). These levels are less than the practical quantitation limit of 5 mg/kg. The proposed criterion is based on the practical quantitation limit. The use of practical quantitation limit as the criterion is based on WAC 173-340-700 (6)(d).

**Silver – 5 mg/kg:** The calculated Method B soil cleanup level for surface water protection is 0.3 mg/kg. This is less than the practical quantitation limit of 5 mg/kg. The proposed criterion is based on the practical quantitation limit. The use of practical quantitation limit as the criterion is based on WAC 173-340-700 (6)(d).

**Thallium – 2 mg/kg:** This is the calculated Method B soil cleanup level for ground water protection.

**Zinc – 85 mg/kg:** The calculated Method B soil cleanup level for surface water protection is 70 mg/kg. This is less than the natural background level. The proposed criterion is based on the natural background concentration of 85 mg/kg in Puget Sound soil. The use of natural background as the criterion is based on WAC 173-340-700 (6)(d).

**Gasoline – 30 mg/kg:** This is the Method A soil cleanup level for "all other gasoline mixtures".

**Diesel – 460/2000 mg/kg:** The terrestrial ecological evaluation soil concentration is 460 mg/kg. This criterion applies to the first six feet of the Third Runway embankment. The 2000 mg/kg criterion is the Method A soil cleanup level for unrestricted land uses. This criterion applies for the embankment to within six feet of the ground surface.

**Heavy Oils – 2000 mg/kg:** This is the Method A soil cleanup level for unrestricted land uses (Table 740-1).

For hazardous substances other than those identified in the above fill criteria table that have been

identified in the Phase II Environmental Site Assessment, please consult with the Department of Ecology Northwest Regional Office, Water Quality Program, for the applicable fill criteria.

**E3. As-Built Documentation**

The Port of Seattle shall provide to the Department of Ecology for review quarterly summaries of:

- Names and locations of fill sources placed for the previous quarter
- Quantities of fill materials from these fill sources
- Locations and elevations of fill source materials placed within the embankment.

The Department of Ecology may require additional compliance conditions and/or corrective actions upon Ecology's review of the as-built documents.

**E4. Post Construction Monitoring**

In order to minimize the potential for migration of hazardous substances, the Department of Ecology expects the Port of Seattle to take appropriate measures to minimize precipitation and subsequent runoff coming into contact with the fill materials. Furthermore, the Department of Ecology expects that runoff and seepage from the fill area shall be monitored for compliance with applicable Washington State surface water criteria. Ground water down-gradient from the fill area shall be monitored for compliance with applicable ground water criteria.

Within 180 days after the issuance of the 401 Water Quality Certification for the Master Plan Update Improvements for the Seattle-Tacoma International Airport, the Port of Seattle shall submit to the Department of Ecology for review and approval a surface water and ground water monitoring plan. The monitoring plan shall be designed to detect impacts of the fill embankment to the receiving water and to the ground water during fill placement and post fill placement. In the event monitoring detects adverse impacts to the receiving water/ground water, the Department of Ecology may revise the fill criteria and/or institute corrective actions to address these impacts.

Basis: The proposed ground water monitoring program is based on WAC 173-340-720 (9). The proposed surface water monitoring program is based on WAC 173-340-730 (7).

**F. Conditions to Prevent Transport of Contaminants:**

1. All Master Plan Update projects and all associated utility corridors shall be constructed in a manner that will prevent the possible interception of contaminated groundwater originating from the Airport Maintenance and Operations Area or other potentially contaminated STIA areas. The Port of Seattle shall develop a plan to monitor potential contaminant transport to soil and groundwater via subsurface utility lines at the STIA by September 14, 2001. The plan shall be submitted to Ecology's Federal Permit Manager.
2. The Port shall have staff trained in the detection of hazardous materials and contaminated soils or water inspect on a regular basis all areas where there is clearing and grading, or construction under way. If hazardous materials or contaminated soils or other indications of contamination are discovered the Port shall immediately cease construction in the suspect



area, secure the site and clean up the area in accordance with the Port's XXX plan, the MTCA, and with generally accepted best management practices.

3. The Port shall administer and periodically update the contaminant database and contaminant maps and figures for the airport. The database shall be updated as new information is received. The maps and figures shall be updated annually and delivered to Ecology's Federal Permit Manager in a report of findings for review. Maps and figures shall be similar to the maps and figures shown in the Port's technical memorandum dated June 21, 2001 and entitled, "Analysis of Preferential Ground Water Flow Paths Relative to Proposed Third Runway."
4. The Port shall collect all new environmental data generated by construction activities, cleanup actions, or any other environmental investigations of soil and groundwater throughout the STIA. The information shall be used to update the contaminant database. The Port, airport tenants, and other entities conducting environmental investigations shall continue to provide reports of ongoing cleanup actions and any new contamination discovered to Ecology as required by the Model Toxics Cleanup Act.

**G. Dam Safety Requirements:**

All facilities identified in Table 3-1 of the Comprehensive Stormwater Management Plans that meet the requirements of Chapter 173-175 Washington Administrative Code, Dam Safety Regulations, shall obtain a Dam Safety Permit from Ecology prior to commencement of construction. If any stormwater facilities identified in the CSMP change during final design such that they meet the requirements of Chapter 173-175 WAC, those facilities shall obtain a Dam Safety Permit from Ecology prior to commencement of construction.

**H. Conditions for Upland Construction Activities:**

1. During construction the Applicant shall comply with all stormwater requirements within the National Pollutant Discharge Elimination System (NPDES) *Permit No. WA-002465-1 as modified on xxx, 2001* for this project.
2. The project shall be clearly marked/staked prior to construction. Clearing limits, travel corridors and stockpile sites shall be clearly marked. Sensitive areas to be protected from disturbance shall be delineated and marked with brightly colored construction fence, so as to be clearly visible to equipment operators. All project staff shall be trained to recognize construction fencing that identifies sensitive areas boundaries (wetlands, streams, riparian corridors, buffers, etc.). Equipment shall enter and operate only within the delineated clearing limits, corridors and stockpile areas.
3. The Applicant shall follow and implement all specifications for erosion and sediment control specified in the Stormwater Pollution Prevention Plan (SWPPP) and/or Erosion and Sediment Control (ESC) plan as required in the NPDES permit. The erosion control devices shall be in place before starting construction and shall be maintained, so as to be effective throughout construction. **Some adjustments to planned erosion and sediment control may be allowed in order to meet the water quality standards.**
4. The Applicant shall periodically inspect and maintain all erosion control structures.

Inspections shall be conducted no less than every seven (7) days from the start of the project to final site stabilization. Additional inspections shall be conducted after rainfall events greater than 0.5 inches per 24-hour period, to ensure erosion control measures are in working condition. These inspections shall be conducted within 24 hours after the event. Any damaged structures shall be responded to immediately. If it is determined during the inspection that additional measures are needed to control stormwater and erosion, such measures shall be implemented immediately. Inspections shall be documented in writing and shall be available for Ecology's review upon request.

5. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall not be discharged into state waters. The Applicant shall establish and maintain a designated area for washing down equipment and vehicles so that wash waters are managed and treated to avoid a violation of water quality standards.
6. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in order to prevent contamination to surface waters.
7. All excess excavated material shall be disposed of above the ordinary high water mark and shall be contained so as to prevent its re-entry into waters of the state.
8. Turbid water generated from construction activities, including turbid dewatering water, shall not be discharged directly to waters of the state. Turbid water shall be pumped to a treatment facility to allow the fine materials to settle and then discharged as per the NPDES permit requirements, or transferred offsite to a treatment facility.
9. Dewatering water that is not turbid may be discharged directly to *the Narrows* provided that:
  - a) the waste water has not been in contact with raw concrete or other harmful material; and
  - b) the water will meet all the water quality standards at the point of discharge.

**G. Conditions for Mitigation of Low Flow Impacts:**

Ecology has reviewed the December 2000 Low Streamflow Analysis and the Low Stream Flow Memorandum and Draft Operations and Maintenance Plan. The Port shall submit a Revised Low Stream Flow Analysis and a Revised Operations and Maintenance Plan within 30 days of receipt of this order for review and approval by Ecology. The Low Flow Offset Operations and Maintenance Plan shall include conceptual designs.

The Port is prohibited from placing any fill in wetlands or waters of the state in the Des Moines, Miller or Walker Creek basins until Ecology has provided written approval of the Low Flow Offset Operations and Maintenance Plan. Violation of this condition may result in the revocation of this Order.

**Monitoring and Reporting Requirements:**

- Stream gage data, evaluation/correlation to expected flow rates established by the model
- water quality sampling and reporting
- metering of water from vaults,
- contingency plan for providing water if vaults do fill to the required mitigation level,
- testing and reporting on how placed embankment fill meets fill specifications

- infiltration rate sampling and monitoring to evaluate performance of the fill
- establishment of contingency measures in case fill does not meet performance standards

**I. Operational Stormwater Requirements:**

Approved Stormwater Plan: The Comprehensive Stormwater Management Plan, Volumes 1 through 4, December 2000 as revised by the July 2001 Replacement pages is the approved stormwater management plan for this project. It shall be implemented in its entirety. No changes to the plan shall be made without prior review and approval.

The Port shall provide Ecology with draft proposed changes to the Plan no later than 60 days prior to the date it wishes to implement a change to the plan.

The Port shall implement the project in accordance with the schedule provided in Table A-3 (July 2001). Any changes to the schedule must be reviewed and approved in advance by Ecology. The Port shall provide Ecology with a draft revised schedule no later than 60 days prior to the date it wishes to implement the change to the schedule. The following facilities/projects listed in Table A-3 (July 2001) do not have yet have stormwater treatment facilities proposed: XXX. If the Port decides to build any of these facilities/project the Port must submit conceptual drawings that meet the performance standards of the CSMP to Ecology for review and approval.

Retrofitting of stormwater management facilities at the STIA shall occur at a rate commensurate with the construction of new impervious surface at the STIA. For every ten percent of new impervious surface added at the project site, the Port must demonstrate that an equal 10 percent of retrofitting has occurred. The Port shall document the implementation of retrofitting in quarterly progress reports.

Nothing in this Order shall be deemed to prohibit continued participation by the Port in planning efforts to establish regional detention facilities for Des Moines or Miller Creek. The Port may request to amend this Order and the Comprehensive Stormwater Management Plan if it decides to route stormwater to future regional detention facilities. If the Port decides to participate in future regional detention facilities the Comprehensive Stormwater Plan shall be amended to ensure that the following performance standard is met: The Port shall ensure that reduced on-site performance standards achieve the performance standards established for the regional detention facility stormwater is routed to. [Kelly]

Discharge of operational stormwater to state receiving waters:

No stormwater generated by operation of the facilities approved by this Order shall be discharged to state receiving waters until a Water Effects Ratio Study has been completed and approved by Ecology and effluent limitations and monitoring requirements have been established in the Port's NPDES permit. A WERS shall be submitted to Ecology for review and approval no later than XXX.

All stormwater discharges from the project shall be in compliance with state of Washington surface water quality standards (Chapter 173-201A WAC), sediment management standards (Chapter 173-204 WAC) and ground water quality standards (Chapter 173-200 WAC).

- a) The Applicant shall design, construct, operate, and maintain stormwater treatment facilities to ensure that discharges will not result in exceedances of state water quality criteria in receiving waters. All runoff from impervious surfaces (except from the existing bridge) shall be treated using all known available and reasonable treatment

(AKART), at the time of ininal final design.

1. The Applicant shall design the stormwater treatment facilities in accordance with Ecology's stormwater management manual that is in effect at the time of final design, or other equivalent manuals approved by Ecology; or [Discuss with Kevin, John and Kelly]
2. The Applicant may propose other BMPs for stormwater treatment if it can be demonstrated that they will result in stormwater discharges that meet the state water quality standards. Any proposed changes are subject to review and approval by Ecology.
3. The Applicant shall submit the final stormwater treatment system design to Ecology for review and approval 60 days prior to the start of construction of the treatment system. During final design the Port shall evaluate the likelihood that stormwater facilities will intercept groundwater and make modifications to the designs so as to either prevent the interception of groundwater or increase facility sizing to accommodate the groundwater. If facility sizes increase the Port shall evaluate potential impacts to wetlands and whether the increase facility size triggers Dam Safety requirements under Chapter 175-175 WAC.
4. Sixty (60) days prior to the project becoming operational the Applicant shall submit a Stormwater Facilities Operation and Maintenance Plan for Ecology's review and approval. For the purpose of meeting this condition the Applicant may submit other existing documents that meet this requirement. The Port shall identify methods to prevent overtopping of stormwater facilities and the Industrial Wastewater Treatment System to streams during storm events.
5. Construction generated stormwater. Stormwater Pollution Prevention Plans shall be prepared in conformity with the Temporary Construction requirements the NPDES permit.

I. Monitoring and Reporting Requirements:

1. Stormwater monitoring and reporting:
  - a) During construction, the Applicant shall comply with the monitoring and reporting conditions within the NPDES Permit No. XXX issued for this project.
  - b) After construction, the Applicant shall monitor stormwater runoff to determine the success of the stormwater treatment systems. Water quality monitoring and visual observations shall be conducted for the first two years of operation, and shall be conducted at least monthly during storm events or during active runoff into the stormwater treatment system(s). If during or after the initial monitoring effort, results of monitoring show a pattern of exceedances of state water quality standards, additional monitoring may be required.

Sampling and testing shall be done in accordance with 40 CFR and Puget Sound Estuary Protocols, U.S. EPA's NPDES Storm Water Sampling Guidance Document (EPA 833-B-92-001, or equivalent.

- c) In addition to the above, the Applicant shall submit a Stormwater Monitoring plan to Ecology for review and approval 60 days prior to the project becoming operational. This plan shall include the following information:
- 1) name and phone number of person(s) responsible for monitoring;
  - 2) map of sample locations;
  - 3) up-current for turbidity in the receiving water;
  - 4) discharge points prior to stormwater mixing with receiving water;
  - 5) parameter(s) to be monitored;
    - ❖ temperature
    - ❖ pH
    - ❖ Total Suspended Solids
    - ❖ Metals (copper, lead and zinc)
    - ❖ turbidity
    - ❖ flow volume
    - ❖ Total Petroleum Hydrocarbons
  - 6) sample method; and
  - 7) sample frequency.
- d) Results from the stormwater sampling and analysis shall be sent to Ecology's Federal Permit Manager within 30 days of each sampling event.

If the monitoring results show that the water quality standards and the designed treatment systems performance standards are not being met, Ecology may determine the project to be in violation of this Order, and additional treatment conditions and/or mitigation may be required.

Hydraulic design reports for each proposed facility shall be submitted to Ecology for review at least ninety (90) days prior to the proposed start of construction of each facility.

Within thirty (30) days following acceptance by the Port of Seattle of each facility, or portions thereof, a Declaration of Construction shall be completed and signed by the responsible professional engineer for the project and submitted to Ecology.

Extensions of, or changes to, any of the compliance schedules in Conditions XX above shall only through written approval of Ecology.

**J. Emergency/Contingency Requirements:**

1. The Applicant shall develop a spill prevention and containment plan for all aspects of this project, and shall have spill cleanup materials available on site.
2. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:

- a) Cease operations at the location of the violation.
- b) Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
- c) Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at 4325-649-7000, and within 24 hours of other events contact Ecology's Federal Permit Manager at 425-649-4310.
- d) Submit a detailed written report to Ecology within five 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 take, and any other pertinent information.

Compliance with these requirements does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

3. In the event of finding distressed or dying fish, the Applicant shall collect fish specimens and water samples in the affected area, within the first hour of the event. These samples shall be held in refrigeration or on ice until the Applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
4. 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.
5. 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.
6. If at any time during work the Applicant finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the Applicant shall immediately notify the Ecology's NWRO Regional Spill Response Office at 425-649-7000.

**K. General Conditions:**

1. 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.
2. This Order does not exempt and is conditioned upon compliance with other statutes and codes administered by federal, state, and local agencies.
3. Ecology retains continuing jurisdiction to make modifications hereto through supplemental Order, if it appears necessary to further protect the public interest.
4. The Applicant shall have a designee on-site, or on-call and readily accessible to the site, at all times while construction activities are occurring that may affect the quality of ground and

surface waters of the state, including all periods of construction activities.

5. The Applicant's designee shall have adequate authority to ensure proper implementation of the Erosion and Sediment Control (ESC) Plan, as well as immediate corrective actions necessary because of changing field conditions. If the Applicant's designee issues an directive necessary to implement a portion of the ESC Plan or to prevent pollution to waters of the state, all personnel on site, including the construction contractor and the contractor's employees, shall immediately comply with this directive.
  6. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology or WDFW personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.
  7. Copies of this Order and all related permits, approvals, and documents shall be kept on the project site and readily available for reference by the project managers, construction managers and foremen, other employees and contractors of the Applicant, and state agency personnel.
- L. Violations of the Order: Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

Violations of this Order shall be addressed in accordance with the requirements of RCW 90.42 and RCW 43.21B. Upon Ecology's determination that the Port is violating any condition of this Order, it shall serve notice of the violation to the Port by registered mail.

Violation or non-compliance with Conditions XXX-XXX of this Order are considered to be significant and egregious, and shall result in the following penalties:

- for the first 30 days of violation or non-compliance, no less than one thousand dollars (\$1,000) per day per violation.
- If the Port remains out of compliance for more than 30 days, the penalty shall be increased to no less than five thousand dollars (\$5,000) per day for each day of continued non-compliance.

Violation or non-compliance of any other condition of this Order shall result in the following penalties:

- for the first 30 days of violation or non-compliance, no less than five hundred dollars (\$500) per day per violation.
- If the Port remains out of compliance for more than 30 days, the penalty shall be increased to no less than one thousand dollars (\$1,000) per day for each day of continued non-compliance.

Ecology has the discretion to set the penalty amount up to the maximum allowed under RCW 90.48.

If Ecology determines that the Aviation Division of the Port is out of compliance with any of the conditions of this Order, no additional applications from the Aviation Division of the Port for water quality certifications will be reviewed until the existing non-compliance is resolved to the satisfaction of Ecology. [Joan, can we still require this?]

Ecology reserves the right to revoke this certification if the Port fails to meet the compliance schedule requirements of Conditions X, X, etc. of this Order. Compliance with this schedule is necessary for Ecology to have reasonable assurance that the proposed project will be constructed and operated so as to meet state water quality standards and other appropriate requirements of state law.

Appeal process:

Any person aggrieved by this Order may obtain review thereof by appeal. The Applicant can appeal up to 30 days after receipt of the permit, and all others can appeal up to 30 days from the postmarked date of the permit. The appeal must be sent to the Washington Pollution Control Hearings Board, PO Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Northwest Regional Office, Shorelands and Environmental Assistance Program, Attn: Ann Kenny, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated \_\_\_\_\_ at Olympia, Washington.

\_\_\_\_\_  
Gordon White, Program Manager  
Environmental Coordination Section  
Shorelands and Environmental Assistance Program