



Oregon

John A. Kitzhaber, MD, Governor

Department of Environmental Quality

Northwest Region Portland Office

2020 SW 4th Avenue, Suite 400

Portland, OR 97201-4987

(503) 229-5263

Fax: (503) 229-6945

TTY: 711

July 20, 2012

Mr. James Holm
U.S. Army Corps of Engineers
ATTN: CENWP-OP-GP
PO Box 2946
Portland, OR 97208-2946

Dear Mr. Holm:

The Department of Environmental Quality (DEQ) has reviewed application materials pursuant to request for Clean Water Act Section 401 Water Quality Certification (401 WQC) received on April 5, 2012. The applicant, the Oregon Department of Administrative Services, seeks renewal of the 401 WQC issued under the U.S. Army Corps of Engineers Permit application #2004-00803-2 (Department of State Lands [DSL] #34119-FP).

Background: DEQ issued a 401 WQC on August 15, 2006, for proposed construction of a phased multi-use development referred to as the Mill Creek Industrial Park. The U.S. Army Corps of Engineers and DEQ approved modifications to the permit due to proposed site design changes on December 19, 2008. The DEQ 401 WQC expired on August 15, 2011; whereas, the U.S. Army Corps of Engineers expires in December 2020. The applicant is seeking a new 401 WQC for this permit as proposed impacts have not occurred, and the site, the Mill Creek Corporate Center, has not completed full phase build out. Per the requirements of Oregon Administrative Rules Chapter 340, Division 48, DEQ is required to seek public comments for the proposed impacts to waters of the state as described by this proposal. DEQ issued a public notice opportunity on June 13, 2012 and received no comments.

The project is located amid wetlands and unnamed tributaries of Mill Creek, a tributary to the Willamette River, in the city of Salem, in Marion County, Oregon (Section 8, T8S/R2W).

Project Description: Proposed components include: continued phased development of the Mill Creek Corporate Center master plan that will develop parcels for industrial use, business parks, commercial services and open space. Development will include realignment of ditches and roadways, installation of associated infrastructure, installation of stormwater conveyance and treatment facilities and completing compensatory wetland mitigation requirements.

Approximately 6.17-acres wetlands and 11.07-acres waters will be permanently impacted due to the project based on the modifications approved by the U.S. Army Corps of Engineers on December 19, 2008. Compensatory mitigation for permanent impacts will be accomplished through on-site compensatory mitigation measures that will correlate with the phased development, and through purchase of credits from a wetland mitigation bank located within the service area.

Status of Affected Waters of the State: Mill Creek is tributary to the Willamette River. Mill Creek and the Willamette River are classified as water quality limited under the federal Clean Water Act and have US Environmental Protection Agency approved Total Maximum Daily



Loads (TMDLs) that have been developed for the parameters of: Bacteria and Temperature. Mill Creek is listed on Section 303(d) list of impaired water bodies with potential concern for the parameter of Alkalinity.

The above listed parameters impair the following beneficial uses in Mill Creek and the Willamette River: aesthetics; anadromous fish passage; resident fish and aquatic life; salmonid fish rearing and spawning, and water contact recreation.

Certification Decision: Based on the information provided by the applicant and U.S. Army Corps of Engineers, DEQ is reasonably assured that implementation of the project will be consistent with applicable provisions of Sections 301, 302, 303, 306, and 307 of the federal Clean Water Act, state water quality standards set forth in Oregon Administrative Rules Chapter 340 Division 41, and other appropriate requirements of state law, provided the following conditions are incorporated into the U.S. Army Corps of Engineers permit and strictly adhered to by the applicant.

401 CERTIFICATION CONDITIONS

- 1) **Duration of Certification:** This 401 WQC is valid and will expire with the U.S. Army Corps of Engineers permit in December 2020. A new 401 WQC must be obtained prior to any substantial modification of the U.S. Army Corps of Engineers permit.
- 2) **Stormwater Management Plan:** A post-construction stormwater management plan has been developed and submitted on behalf of the applicant. The plan describes how Best Management Practices (BMPs) that will be implemented to prevent or treat pollution in stormwater generated by the proposed project, in order to comply with state water quality standards, Total Maximum Daily Load (TMDL) Load Allocations (LAs), Groundwater Management Area concerns or National Pollutant Discharge Elimination System (NPDES) permit requirements.

The stormwater management facilities and individual parcel plans will be prepared as phased construction progresses, and system components will be designed to comply with the NPDES MS-4 Permit held by the City of Salem. The applicant has submitted a letter detailing agreements between the State of Oregon, the City of Salem, and a future owner's association for implementation and maintenance of the master stormwater management plan as submitted.

- 3) **Isolation of in-water work areas:** Isolation of in-water work areas from the active flowing stream is required. Methods of isolation include, but are not limited to: timing work at low water so as to effectively work in the dry; using silt curtains; cofferdams; inflatable bags; geo blocks; sandbags; sheet piling; or similar materials. The applicant is referred to Appendix D of DEQ's *Oregon Sediment and Erosion Control Manual*, April 2005, for isolation techniques.

<http://www.deq.state.or.us/wq/stormwater/docs/escmanual/appxd.pdf>

- 4) **Erosion Control:** Projects that disturb one acre or more require an NPDES 1200C Storm Water Discharge Permit. Contact the appropriate DEQ regional office for more information (Contact information can be found at: <http://www.deq.state.or.us/wq/>). During construction, the following erosion control measures, or comparable measures as specified in DEQ's *Oregon Sediment and Erosion Control Manual*, April 2005 must be implemented to prevent or control movement of soil into waters of the state.
- a) Filter bags, sediment traps or catch basins, vegetative strips, berms, Jersey barriers, fiber blankets, bonded fiber matrices, geotextiles, mulches, wattles, sediment fences, or other measures used in combination must be deployed to prevent movement of soil from uplands into waterways or wetlands;
 - b) An adequate supply of materials needed to control erosion must be maintained at the project construction site;
 - c) To prevent stockpile erosion, compost berms, impervious materials or other equally effective methods must be deployed during rain events or when the stockpile site is not moved or reshaped for more than 48 hours;
 - d) Erosion control measures must be inspected and maintained daily, or more frequently as necessary, to ensure their continued effectiveness and must remain in place until all exposed soil is stabilized;
 - i. If monitoring or inspection shows that the erosion and sediment controls are ineffective, mobilize work crews immediately to make repairs, install replacements, or install additional controls as necessary.
 - ii. Remove sediment from erosion and sediment controls once it has reached 1/3 of the exposed height of the control.
 - e) Unless part of the authorized permanent fill, all construction access points through, and staging areas in, riparian or wetland areas must use removable pads or mats to prevent soil compaction.
 - f) Avoided wetlands and planted areas must be flagged or fenced off to protect from disturbance and/or erosion.
 - g) Dredged or other excavated material must be placed on upland areas with stable slopes to prevent materials from eroding back into waterways or wetlands;
 - h) Sediment from disturbed areas or able to be tracked by vehicles onto pavement must not be allowed to leave the site in amounts that would reasonably be expected to enter waters of the state and impair water quality. Placement of clean aggregate at all construction entrances, and other best management practices; such as truck or wheel washes if needed, must be used when earth moving equipment will be leaving the site and traveling on paved surfaces.
- 5) **Deleterious waste materials:** Biologically harmful materials and construction debris including, but not limited to: petroleum products, chemicals, cement cured less than 24 hours, welding slag and grindings, concrete saw cutting by-products, sandblasted materials, chipped paint, tires, wire, steel posts, asphalt and waste concrete may not be placed in or where they could enter waterways or wetlands.
- a) Concrete, cement, or grout must be cured for at least 24 hours prior to any contact with flowing waters;
 - b) Only clean fill, free of waste and polluted substances, may be used;

- c) Best Management Practices must be employed to prevent discharges of spills of deleterious materials to surface or ground water;
 - d) An adequate supply of materials needed to contain deleterious materials during a weather event must be maintained at the project construction site and deployed as necessary; and
 - e) All foreign materials, refuse, and waste must be removed from the area.
- 6) **Spill Prevention:** Vehicles must be fueled, operated, maintained, and stored and construction materials must be stored in areas that minimize disturbance to habitat and prevent adverse effects from potential discharges. In addition, the following specific requirements apply:
- a) Vehicle staging, cleaning, maintenance, refueling, and fuel storage must take place in a vehicle staging area placed 150 feet or more from any waters of the state.
 - b) All vehicles operated within 150 feet of any waters of the state must be inspected daily for fluid leaks before leaving the vehicle staging area. Any leaks detected must be repaired before the vehicle resumes operation;
 - c) Before operations begin and as often as necessary during operation, equipment must be steam cleaned (or undergo an approved equivalent cleaning) until all visible external oil, grease, mud, and other visible contaminants are removed if the equipment will be used below the bank of the water body; and,
 - d) An adequate supply of materials (such as straw matting/bales, geotextiles, booms, diapers, and other absorbent materials) needed to contain spills must be maintained at the project construction site and deployed as necessary.
- 7) **Spill & Incident Reporting:**
- a) In the event that petroleum products, chemicals, or any other deleterious materials are discharged into state waters, or onto land with a potential to enter state waters, the discharge must be promptly reported to the Oregon Emergency Response Service (OERS, 1-800-452-0311). Containment and cleanup must begin immediately and be completed as soon as possible.
 - b) If the project operations cause a water quality problem that results in distressed or dying fish, the operator must immediately: cease operations; take appropriate corrective measures to prevent further environmental damage; collect fish specimens and water samples; and notify DEQ, Oregon Department of Fish and Wildlife and other appropriate regulatory agencies.
- 8) **Vegetation Protection and Restoration:**
- a) Riparian, wetland, and shoreline vegetation in the authorized project area must be protected from disturbance to the maximum extent practicable through one or more of the following:
 - i. Minimization of project and impact footprint;
 - ii. Designation of staging areas and access points in open, upland areas;
 - iii. Fencing and other barriers demarking construction areas; and,

iv. Use of alternative equipment (e.g., spider hoe or crane).

- b) If authorized work results in unavoidable vegetative disturbance and the disturbance has not been accounted for in planned mitigation actions, riparian, wetland and shoreline vegetation must be successfully reestablished to a degree that it functions (for water quality purposes) at least as well as it did before the disturbance. The vegetation must be reestablished by the completion of authorized work.
- 9) The applicant must notify DEQ of any change in ownership and obtain DEQ review and approval before undertaking any change to the project that might significantly affect water quality.
 - 10) DEQ may modify or revoke this 401 WQC, in accordance with OAR 340-048-0050, in the event of project changes or new information indicating that the project activities are having a significant adverse impact on state water quality or beneficial uses.
 - 11) A copy of this 401 WQC letter shall be kept on site and readily available for reference by the applicant and its contractors, U.S. Army Corps of Engineers, DEQ and other appropriate state and local government inspectors.
 - 12) This 401 WQC is invalid if the project is operated in a manner not consistent with the project description contained in the permit application materials.
 - 13) The applicant and its contractors must allow DEQ site access at reasonable times as necessary to monitor compliance with these 401 WQC conditions.

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If the applicant is dissatisfied with the conditions contained in this certification, a contested case hearing may be requested in accordance with OAR 340-048-0045. Such request must be made in writing to the DEQ Office of Compliance and Enforcement at 811 SW 6th Avenue, Portland Oregon 97204 within 20 days of the mailing of this certification.

The DEQ hereby certifies this project in accordance with the Clean Water Act and state rules, with the above conditions. If you have any questions, please contact Corey Saxon at saxon.corey@deq.state.or.us, by phone at 503 229-5051 or at the address on this letterhead.

Sincerely,



Steve Mrazik
Water Quality Manager
Northwest Region

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cc: Applicant
Dan Cary, DSL