

St. Johns Neighborhood Association

8316 N. LOMBARD STREET, #441
PORTLAND, OREGON 97203

April 27, 2003

Ms. Stephanie Hallock
Oregon Dept. of Environmental Quality
Water Quality Division
811 SW 6th Avenue
Portland, OR 97204

Dear Ms. Hallock

We, the undersigned, and the St. Johns Neighborhood Association, all Oregon citizens, request a public meeting concerning the CWA 404 permit (action # 200200175) and its accompanying CWA 401 certification (25189-GA) proposed by the Oregon Department of Environmental Quality. The action proposed in this permit is a significant development impacting the closure of the St. John's Landfill. It will result in the unconsidered spreading of hazardous sediments over 2,000 acres.

This proposed action concerns a water control device at the confluence of Smith and Bybee Lakes (the "Lakes") and the North Slough. The length of the North Slough is entirely bounded by the St. Johns Landfill. Sediments in the North Slough are known to be hazardous to wildlife and humans. The water in the North Slough often does not meet a variety of State water quality standards. This request for a public meeting is the continuation of neighborhood attempts to resolve issues surrounding the nexus of the landfill hazardous waste and the potential contamination of the Lakes with North Slough sediments and leachate from the landfill.

RECEIVED

MAY 01 2003

Oregon DEQ
Office of the Director

The St. Johns Landfill /Smith and Bybee Lakes area is a dynamic system. The St. Johns landfill is a hazardous waste site. Surface waters surrounding the landfill are either impacted by leachate or are potentially impacted by leachate.

The St. John's Landfill was the City of Portland's main garbage landfill for a half century. This landfill was closed in the late 1990's and a closure plan was developed with public participation in 1989. Both the St. John's landfill and the Lakes were subject to extensive and intensive environmental planning in the late 1980's. Metro was responsible for the implementation of that planning. Metro has vitiated both the 1989 closure plan for the landfill and the natural resource management plan, placing environmental security in jeopardy in order to control the costs associated with closure. All of the subsequent changes to the closure plan have been without public notice or comment. Metro simply seems to intend to meet water quality standards in the North Slough by mixing the North Slough waters with the water in the Lakes. Placing the proposed water control structure without either a review of the environmental effects or a water management plan is irresponsible.

By 1994 it was obvious to the landfill neighbors that Metro was not going to abide by the 1989 closure plan. The EQC looked extensively into the matter in 1994. In an action taken in 1994, the EQC required Metro to produce a risk assessment for the surface waters surrounding the landfill. When the risk assessment was completed, it was obvious that the risks as presented were greatly understated. Subsequently the DEQ informed the neighbors that a more realistic risk assessment would be required. Nonetheless, even with the flawed risk assessment, sediments in the area of the proposed project were found to be of an order of magnitude of 1 in 10,000 deaths per normal exposure. This is very significant. The EPA considers 1 in 100,000 significant.

N Slough corp
PCBs > Lake &
slough corp

The DEQ has finally, nearly a decade after it was required, decided to consider asking Metro to produce a valid risk assessment in a consolidated closure permit and final stipulated order requiring more studies. DEQ should not allow the abdication of its duty to protect the health of the public be the reason for the lack of consideration that allows Metro to further impact the Lakes. No project should be undertaken prior to the development of a valid complete closure Plan.

Metro's intent is to drain Smith and Bybee Lakes most of the year, but when the Lakes are empty, the water pushed by the tide up the North Slough would fill the Lakes with leachate from the North Slough. The effects of the project on the Lakes or the landfill would be an issue properly raised in a public meeting.

The project, as Metro would build it, damages the environment in many ways. Allowing the project as proposed would prevent the consideration of other superior alternatives in the future that are less obtrusive and more complete alternatives. Those projects would be more cost effective when all the objectives of such a project are understood.

REASONS WHY A CORPS OF ENGINEERS PUBLIC MEETING IS NECESSARY:

The Public Notice and Metro's Plan for filling the Columbia and Blind Slough are flawed by the failure to consider both procedural and substantive issues. Some of these issues are:

- (1) The permit notice, application and proposed conditions are "boiler plate language" rather than true consideration or information.
- (2) The SJNA asks for a valid and complete risk assessment that is part of a consideration of the effect of the project on the total surface water system surrounding the St. Johns Landfill.

- (3) The SJNA asks that no piecemeal projects be undertaken until complete consideration of the entire surface water system surrounding St. Johns Landfill designed increase protection of waters and populace of the St. John's Peninsula is undertaken.
- (4) The SJNA asks that this complete consideration include the effects of alternative projects to the proposed project become the process.
- (5) A public meeting would allow issues to be raised and Metro's responses to be challenged. Without the meeting and a more complete application, Metro gains from failing to even mention the relevant issues, because when raised for the first time in written comments, Metro's response will go unchallenged. Two of those issues are:
- a. The Project will allow avoidable and illegal leachate contamination from the North Slough into the Lakes.
 - b. The Project will cause hazardous sediment transport from the area of the current sabotaged tide-gate to the Lakes.
- (6) This project is in the floodplain. Where are the dredged materials going to be disposed? Should the disposal of hazardous spoils be announced prior to public comment? The proposed alternative does not consider the floodplain.
- (7) Mitigation of negative effects of the project is required by law. Metro fails to point out any negative effects to the public while proposing their mitigation. This defeats real consideration of mitigation. A public meeting is the last and best opportunity for the public to request mitigation for the negative effects of the project.
- (8) The permit application proposes a single alternative. Federal Code, COE Regulations and Executive Orders all require the consideration of alternatives. At the public meeting, consideration of less dangerous, more complete alternatives could be advanced and defended.

Alternative analysis is required in order for a CWA 404 permit to be issued. Since Metro failed to produce any alternative analysis and the Corps of Engineers abdicated its duty to require alternative analysis, the COE foists the responsibility for alternative analysis on the public. A public meeting would provide a fair opportunity to present and debate other alternatives. This debate would by its nature include effects on water quality.

(9) Sediments to be dredged during construction are contaminated and dangerous to the health of anybody that might come in contact with these re-suspended or discharged pollutants. The permit makes no notice or mention of these sediments and discussed neither their monitoring nor their disposal. Even Metro's flawed risk analysis determined these sediments were less acceptable than the EPA standard. That risk assessment failed to note the confirmed risk from dioxin. St. John's Landfill is nationally recognized for its dioxin. Metro has failed to mention the contaminated and toxic sediments. This admission can be a topic dealt with at a public meeting or in federal court. It will not disappear because Metro treacherously failed to mention the issue.

(10) A meeting for the 401 certification is also needed to discuss coordination of different parts of DEQ that also have a duty to review this proposal. DEQ has consistently failed to coordinate even its own departments (i.e., Solid Waste, Water Quality and State Hazardous Waste) in formulating a comprehensive and workable closure plan for the St. John's Landfill, fifteen (15) years after legally mandated. Now a piecemeal project causing environmental damage and increasing the cost of real action is about to be given a green light.

(11) This letter requests a public meeting concerning a project in the Smith and Bybee Lakes area. There is another connected project that should also be part of the public meeting. There has been a washout between the banks of the Columbia Slough and Bybee Lake. This washout

will drain the Lakes making the proposed Project useless. Coincidentally this exact site was proposed in the 1989 environmental review as the location of a tide gate that would improve the water quality of the Lakes. Both proposals should be addressed at the same time.

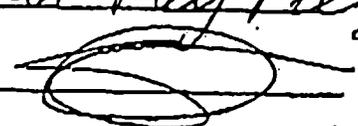
(12) The water control devise is a facility with a large potential to effect water quality. The application is incomplete. 340-048-0020 (2) would require at least a water management plan. Metro should not be allowed to drain the lakes without public consideration.

In order to timely appeal a possible negative decision on this request, this letter also requests notification of the decision of the DEQ employee to not have a public meeting prior to a decision on the Project. In the past members of the St. Johns Neighborhood Association have requested both a Public Meeting and a negative determination, only to be notified by the dredging of contaminated sediments. Please allow time in your decisions on this Project for the SJNA to protect the health of their children in other forums.

Sincerely,

Public
Heard

We the undersigned and the St, Johns Neighborhood, ask that you PLEASE ALLOW US TO HAVE A PUBLIC MEETING due to the fact the State and Federal government have abdicated their duty to fully consider proposed projects and protect the public.

NAME	ADDRESS	SIGNATURE
1 Robin Plance	9137 N. Central	Robin Plance
2 Jane Bogus	9128 N. Buchanan	Jane Bogus
3 CAROLE WARNER	7454 N. Mohawk	Carole Warner
4 Frank Vanek	8552 N. Tingaave	Frank Vanek
5 John Farn	8533 N. Buchanan Ave	John Farn
6 June Perkins	9846 N. James	June Perkins
7 Ray Piltz	7209 N. Buchanan	Ray Piltz
8 SUZANNE PEOT	2701 N. Terry	
9 ELEANORE Piltz	7209 N. Buchanan	Eleanore E. Piltz
10 BEATRICE WALKER	4133 N. Buchanan	Beatrice Walker
11 Wm Michael Jones	2716 NE Mason	Wm Michael Jones
12		
13		
14		
15		

From: Elaine Stewart
To: Gus Williams
Date: 8/18/03 9:42AM
Subject: DEQ and 401 certification

I met with Tom Melville, Oregon DEQ, last Thursday to discuss the 401 certification for the water control structure. He'll be issuing the certification (if he hasn't already), and gave me a heads-up of a condition. The turbidity of the water discharged into Bybee Lake from our dewatering work should not exceed 10 percent higher than the background turbidity in Bybee 100 feet from the work area. Tom suggested a simple method, placing silt fence in Bybee Lake and creating an artificial cove or settling pond to send the water into. That would allow the sediments to settle out a bit before pumping the water on into Bybee.

You're no doubt way ahead of me on this one, but I wanted to pass the idea along since it was news to me.

-Elaine

Elaine Stewart
Smith and Bybee Lakes Wildlife Area Manager
Metro
600 NE Grand Avenue
Portland, OR 97232-2736

Tel 503.797.1515
Fax 503.797.1849
stewart@metro.dst.or.us

CC: Chuck Lobdell

From: Lisa Domenighini <LDomenighini@ncalabs.com>
To: "stewarte@metro.dst.or.us" <stewarte@metro.dst.or.us>
Date: 8/18/03 2:06PM
Subject: question

Elaine: Since the analytical requested does not include any volatile analysis, receipt of the samples at the elevated temperature should not compromise the data.

Thank you,
Lisa Domenighini, Project Manager
North Creek Analytical - Beaverton
Direct: 503-906-9232
Phone: 503-906-9200
Fax: 503-906-9210

The information contained in this communication is confidential and privileged proprietary information intended only for the individual or entity to whom it is addressed. Any unauthorized use, distribution, copying or disclosure of this communication is prohibited. If you have received this communication in error, please contact the sender immediately. It is our policy that e-mails are intended for and should be used for business purposes only.

North Creek Analytical - Beaverton
www.ncalabs.com <<http://www.ncalabs.com/>>

Outgoing mail is certified Virus Free.
Checked by AVG anti-virus system (<http://www.grisoft.com>).
Version: 6.0.509 / Virus Database: 306 - Release Date: 8/12/2003



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

811 SW Sixth Avenue
Portland, OR 97204-1390
503-229-5696
TTY 503-229-6993

August 22, 2003

Mary Headley
U.S. Army Corps of Engineers
ATTN: CENPP-OP-GP
P.O. Box 2946
Portland, OR 97208-2946

Dear Ms. Headley:

The Department of Environmental Quality (DEQ) has reviewed the U.S. Army Corps of Engineers (USACE) permit application #2002-00175 [Division of State Lands (DSL) application # 25189-GA]. The applicant, Metro Regional Parks and Greenspaces, proposes to remove an existing dam and flap gate and replace it with a multi-celled water control structure to accommodate fish passage and enhance habitat management in the Smith and Bybee Lakes Wildlife Area. The project is located at the southeast corner of Bybee Lake and the east end of North Slough, a tributary of Columbia Slough in Portland, Multnomah County, Oregon (Section 36, T2N/R1W and Section 31, T2N/R1E).

This project is funded by the U.S. Fish and Wildlife Service through a North American Wetlands Conservation Act grant. Coordination has also occurred with Ducks Unlimited. The primary purpose of this action is to restore, to the maximum extent possible, natural hydrology to this large wetland complex. The project will restore approximately 1,600 acres of seasonal emergent and forested wetland habitat to the Smith and Bybee Lakes system. Water levels will continue to be manipulated during some periods of the year to assist in the control of nonnative plants.

A total of approximately 1,068 cubic yards of material, including the current structure will be removed. About 200 cubic yards of that total may be reused to bed the replacement structure. The remainder will be disposed of at an upland site.

On August 4, 2003 the National Marine Fisheries Service (NOAA Fisheries) completed formal consultation on the proposed project pursuant to the Endangered Species Act (ESA). The biological opinion delivered to the U. S. Fish and Wildlife Service concluded that the proposed action is not likely to jeopardize the continued existence of listed species occurring in the project area, but will adversely effect essential fish habitat (EFH) for starry flounder, and, coho and chinook salmon in the action area. As required by section 7 of the ESA, NOAA Fisheries included discretionary conservation measures, and reasonable and prudent measures with nondiscretionary terms and conditions that they believe are necessary to minimize the potential for incidental take associated with this action.

Smith Lake and Bybee Lake are classified as Water Quality Limited under Section 303 (d) of the Federal Clean Water Act for the following parameters: Aquatic Weeds or Algae, and pH (Summer).

Based on information provided by the applicant, DEQ does not anticipate any long-term violations of State Water Quality standards, including Oregon Administrative Rule (OAR) 340-

041-0026 (1)(a), Antidegradation Policy for Surface Waters, provided the conditions which follow are incorporated into the permit.

- 1) **Fish protection/ODFW timing:** All in-water work shall occur within the Oregon Department of Fish and Wildlife's (ODFW) preferred time window as specified in Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources, June 2000. Exceptions to the timing window must be reviewed and approved by the Division of State Lands (DSL), ODFW, and NOAA's National Marine Fisheries Service (NOAA Fisheries).
- 2) **Aquatic life movements:** No activity may substantially disrupt the movement of those species of aquatic life indigenous to the water body, including those species that normally migrate through the area. Unobstructed fish passage must be provided at all times during any activity unless otherwise authorized.
- 3) **Turbidity/erosion controls:** The authorized work shall not cause turbidity of affected waters to exceed 10% over natural background turbidity 100 feet downstream of the turbidity causing activity. For projects proposed in areas with no discernible gradient break (gradient of 2% or less), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This turbidity standard exceedance interval applies only to coastal lowlands, floodplains, and valley bottoms. For projects in all other areas, the turbidity standard can be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects may also be subject to additional reporting requirements.

Turbidity shall be monitored during active in-water work periods. Monitoring points shall be an undisturbed site (representative background) 100 feet upstream from turbidity causing activity (i.e., fill or discharge point), 100 feet downstream from the fill point, and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard.

Practicable erosion control measures which shall be implemented, as appropriate, include but are not limited to the following:

- a) Place fill in the water using methods that avoid disturbance to the maximum practicable extent (e.g. placing fill with a machine rather than end-dumping from a truck);
- b) Prevent all construction materials and debris from entering waterway;
- c) Use filter bags, sediment fences, sediment traps or catch basins, silt curtains, leave strips or berms, Jersey barriers, or other measures sufficient to prevent movement of soil;
- d) Use impervious materials to cover stockpiles when unattended or during rain event;
- e) Erosion control measures shall be inspected and maintained daily, to ensure their continued effectiveness;
- f) No heavy machinery in a wetland or other waterway;

- g) Use a gravel staging area and construction access;
- h) Fence off planted areas to protect from disturbance and/or erosion; and,
- i) Flag or fence off wetlands adjacent to the construction area.

Turbidity shall be measured (or visually assessed) and recorded at the designated monitoring interval prescribed above during periods of active construction. The designated person attending the monitoring equipment shall be responsible for notifying the project foreman of any exceedance of the turbidity standard. If a 10% exceedance of the background level occurs at 100 feet below the project site, modify the activity causing the problem and continue to monitor at the proper interval. If exceedances occur with two consecutive measurements stop the activity causing the turbidity until the problem is resolved.

4) **Deleterious waste materials:**

- a) Petroleum products, chemicals, fresh cement, riprap grout, or other deleterious waste materials shall not be allowed to enter waters of the state;
- b) Use only clean fill free of waste and polluted substances to maintain water quality;
- c) Best management practices (BMPs) shall be employed in order to prevent discharges of spills to surface or ground water;
- d) Machinery refueling and maintenance is to occur off site or in a confined designated area away from all waterways. BMP's shall be employed in order to prevent discharges of spills to surface or ground waters; and,
- e) The applicant must remove all foreign materials, refuse, and waste from the area.

5) **Planting/re-vegetation:**

- a) Plant new vegetation or replace any existing vegetation in areas which may be disturbed as a result of this project, in order to restore the function and stability of the landscape and habitat;
- b) Plant disturbed areas with native plants and trees in all cases except where the use of non-native plant materials may be essential for erosion control; and
- c) The standard for success is 80% cover for native plant species. Temporary fencing off of planted areas may be required to insure success.

6) Every effort must be made to conduct the water control structure replacement construction activities for this project in the "dry", i.e. berms or other structures which isolate the area from flow-through must be left in place on both the upstream and downstream ends during earth moving and construction activities.

7) During construction storm water runoff or wash water from disturbed soils, permanent impervious road surfaces, access lanes, and parking lots shall be first treated by a facility specifically designed to remove storm water contaminants before entering state waterways or wetlands, including mitigation wetlands, so as to minimize contaminants entering those water bodies.

- 8) Provide a buffer zone, where practicable (minimum width of 50 feet recommended) in order to protect existing riparian areas, and existing and mitigation wetlands.
- 9) DEQ reserves the option to modify, amend or revoke this water quality certificate (WQC), as necessary, in the event new information indicates that the project activities are having a significant adverse impact on State water quality or critical fish resources.
- 10) A copy of this WQC letter shall be kept on the job site and readily available for reference by the Corps of Engineers, DEQ personnel, the contractor, and other appropriate state and local government inspectors.
- 11) This WQC is invalid if the project is operated in a manner not consistent with the project description contained in the permit application.
- 12) DEQ is to have site access upon reasonable request.
- 13) If you are dissatisfied with the conditions contained in this certification, you may request a hearing before the Environmental Quality Commission. Such request must be made in writing to the Director of DEQ within 20 days of the mailing of this certification. You may also request written information about alternative dispute resolution services under Oregon Revised Statute 183.502, including mediation or any other collaborative problem-solving process.

The DEQ hereby certifies that this project complies with the Clean Water Act and state water quality standards, if the above conditions are made a part of the Federal permit. The applicant shall notify the DEQ of any change in the ownership, scope, or construction methods of the project subsequent to certification. If you have any questions, please contact Tom Melville at (503) 229-5845.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael T. Llewelyn" followed by "(for M.L.)" in parentheses.

Michael T. Llewelyn, Administrator
Water Quality Division

T:TM.Certhead.02-175

Cc: Applicant
Kirk Jarvie, DSL
Bob Baumgartner, DEQ
Tim Spencer, DEQ
Wm. Michael Jones, St. Johns Neighborhood Association

From: Elaine Stewart
To: MELVILLE Tom
Date: 9/3/03 1:28PM
Subject: RE: Question re 401 cert.

FYI - Got the results from the lab - see the attached table. Pesticides and organics (PAHs) were not detected, and metals are well below screening levels. I faxed the same table to Mary Headley at the Corps for her information.

-Elaine

>>> "MELVILLE Tom" <MELVILLE.Tom@deq.state.or.us> 08/25/03 05:02PM >>>

That's the right one. You probably recall that this protocol is used to determine suitability for unconfined in-water disposal. I'm not sure how this would work (if testing comes in above Screening Levels in Table 8) if the material is going right back in to the place it was removed.
Tom

Tom Melville
Section 401 Program Coordinator
Division of Water Quality
Surface Water Management Section
Oregon Department of Environmental Quality

-----Original Message-----

From: Elaine Stewart [<mailto:stewarte@metro.dst.or.us>]
Sent: Monday, August 25, 2003 4:28 PM
To: MELVILLE Tom
Subject: RE: Question re 401 cert.

Hi Tom,

Thanks for the reply. I had some samples taken about 10 days ago and should have the results later this week. I expect they will look the same as the Bybee Lake and North Slough results that you have already seen; I had the technician take them from 6 to 36 inches below the typical low tide line along the earth berm. They should reflect the worst-case scenario.

If I remember right, you thought the Corps' dredged material standards were the appropriate benchmark. I found them on the Corps' website and printed the screening table (table 8-1); let me know if I got the wrong table.

-Elaine

>>> "MELVILLE Tom" <MELVILLE.Tom@deq.state.or.us> 08/25/03 03:59PM >>>

Elaine,
Yes I assume it would qualify as clean fill, considering it's upland origin. We discussed some testing, is that still alive? That would be the final qualifier.
Tom

Tom Melville
Section 401 Program Coordinator
Division of Water Quality
Surface Water Management Section
Oregon Department of Environmental Quality

-----Original Message-----

From: Elaine Stewart [<mailto:stewarte@metro.dst.or.us>]
Sent: Monday, August 25, 2003 1:54 PM
To: MELVILLE Tom
Subject: Question re 401 cert.

Hi Tom,

Got my copy of the 401 cert. in today's mail. Thanks so much for getting it out so quickly.

Forgive me for being so dense, but I have a question regarding item 4.b. on page 3 - "Use only clean fill free of waste and polluted substances to maintain water quality;". Does re-using the soil in the existing dam qualify as "clean fill"?

Thanks for all your help.

-Elaine

Elaine Stewart
Smith and Bybee Lakes Wildlife Area Manager
Metro
600 NE Grand Avenue
Portland, OR 97232-2736

Tel 503.797.1515
Fax 503.797.1849
stewarte@metro.dst.or.us

Sediment Testing Results - Dam at Smith-Bybee

Chemical	COE SL	NS1	NS2	BY1	BY2
<i>Metals (mg/kg)</i>					
Arsenic	57	6.45	5.06	7.49	6.73
Copper	390	33.4	30.5	41.2	29.8
Lead	450	20.5	15.3	37	18.4
Mercury	0.41	0.109	0.062	0.0793	0.0467
Nickel	140	21.9	22.8	22	22.2
Zinc	410	118	159	145	110
<i>Pesticides (ug/kg)</i>					
Total DDT	6.9	ND	ND	ND	ND
<i>Organics (ug/kg)</i>					
Fluorene	540	ND	ND	ND	ND
Pyrene	2,600	ND	ND	ND	ND
Indeno (1,2,3-cd) pyrene	600	ND	ND	ND	ND
Benzo(a)anthracene	1,300	ND	ND	ND	ND
Benzo(a)pyrene	1,600	ND	ND	ND	ND

COE SL = Corps of Engineers screening level (Table 8-1, Nov. 1998 Evaluation Framework)

NS1 = North Slough sample #1

NS2 = North Slough sample #2

BY1 = Bybee Lake sample #1

BY2 = Bybee Lake sample #2

ND = not detected

Note: samples taken August 14, 2003. Samples extended up to 3 ft. into the dam, at the foot of the dam where soils are saturated; results should provide the worst-case scenario for soil/sediment quality.