



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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August 3, 2021

City of Des Moines
Attn: Scott Wilkins
22307 Dock Ave S
Des Moines, WA 98198-4690

RE: Amendment to 401 Water Quality Certification Order #16871 for U.S. Army Corps of Engineers Reference NWS-2019-00478, Des Moines Marina Entrance Channel Maintenance Dredging, Des Moines, King County, Washington

Dear Scott Wilkins:

Enclosed is an amendment to Water Quality Certification Order #16871 issued December 20, 2019, for the above project. We have also included a strikeout version of the Water Quality Certification that reflects the changes made. All other conditions of Water Quality Certification #16871 remain in effect.

The purpose of this amendment is to add mitigation required through the permitting process. Mitigation includes removal of creosote-treated pilings, and replacement of some creosote-treated pilings with steel pilings.

If you have any questions, please contact Laura Inouye at 360-515-8213. The enclosed Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

Brenden McFarland, Section Manager
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program

Ecc: Kristin McDermott, U.S. Army Corps of Engineers
Josh Jensen, Anchor QEA
Loree' Randall – HQ
Laura Inouye – HQ
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING) **ORDER #16871**
A WATER QUALITY) **First Amendment**
CERTIFICATION TO) **Corps Reference No. 2019-00478**
City of Des Moines)
In accordance with 33U.S.C. 1341)
(FWPCA §401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: City of Des Moines
ATTN: Scott Wilkins
22307 Dock Ave S
Des Moines, WA 98197-4690

On December 20, 2020, the Washington Department of Ecology (Ecology) issued a 401 Water Quality Certification to the City of Des Moines for the Des Moines Marina Entrance Channel Maintenance Dredging project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401).

Ecology received a request on June 14, 2021, requesting addition of mitigation actions required through the permitting process for the project. The mitigation includes removal of existing creosote piles, and replacement of a limited number of creosote treated piles with steel piles.

Order No. 16871 dated December 20, 2020, is hereby amended as follows:

I. The Project Description is updated by adding:

The project will also include removal of creosote pilings, and replacement of creosote pilings with steel piles.

II. The following conditions are added:

D.22. Pile removal, handling, and disposal shall follow the EPA Region 10 Best Management Practices for Piling Removal and Placement in Washington State, dated February 18, 2016 (Attachment B).

D.23. If pile removal fails, the pile stub must be cut at least 2 ft below mudline, and the location (latitude and longitude) of all cut piling shall be reported to Ecology within 2 months of removal of all piles.

No other conditions or requirements of the above referenced Order are affected by this amendment.

August 3, 2021

Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if it appears necessary to further protect the public interest.

Failure to comply with this amended Order may result in the issuance of civil penalties or other actions whether administrative or judicial, to enforce the terms of this amended Order.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW STE 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Order to:

Laura Inouye
Department of Ecology
Headquarters Office
PO Box 67600
Olympia, WA 98504-7600
(360) 407-6165
Laura.inouye@ecy.wa.gov

MORE INFORMATION

- **Pollution Control Hearings Board Website**
<http://www.eluho.wa.gov/Board/PCHB>
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**
<http://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**
<http://app.leg.wa.gov/RCW/default.aspx?cite=34.05>



Brenden McFarland, Section Manager
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program

Aug 3, 2021

DATE

IN THE MATTER OF GRANTING A) ORDER # 16871
WATER QUALITY) Corps Reference No. NWS-2019-00478
CERTIFICATION TO) Des Moines Marina entrance channel
City of Des Moines) maintenance dredging, Puget Sound, located in
in accordance with 33 U.S.C. 1341) King County, Washington.
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

City of Des Moines
Attn: Scott Wilkins
22307 Dock Ave S
Des Moines, WA 98198-4690

On May 22, 2019 the Department of Ecology (Ecology) received a Joint Aquatic Resources Permit Application (JARPA) from the City of Des Moines requesting a Section 401 Water Quality Certification (WQC) for the Des Moines Marina Entrance Channel Maintenance Dredging. The U.S. Army Corps of Engineers (Corps) issued a joint public notice for the project on August 12, 2019.

The proposed project entails maintenance dredging of up to 7,600 cy cubic yards of sediment at the entrance channel to the Des Moines Marina, to a maximum depth of 15 FT below mean lower low water. **The project will also include removal of creosote pilings, and replacement of creosote pilings with steel piles.**

This project is located in section SW 08 NW 17, township 22 N, range 4 E, in WIRA 9 (Duwamish-Green).

AUTHORITIES

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 302, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. 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

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will comply with applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. §1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the City of Des Moines to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification absolves Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments resulting from project construction or operations.

A. General Conditions

1. In this Order, the term "Applicant" shall mean the City of Des Moines and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent to Ecology Headquarters Office, Attn: Federal Permit Manager, PO Box 47600 Olympia, WA 98504-7600 or via e-mail to fednotification@ecy.wa.gov and cc to laura.inouye@ecy.wa.gov. The submittals shall be identified with Order #16871 and include the Applicant name, project name, project contact, and the contact phone number.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on May 22, 2019.
4. The Applicant shall obtain Ecology review and approval before undertaking any changes to the proposed project that might significantly and adversely affect water quality, other than those project changes required by this Order.
5. Within 30 days of receipt of any updated information, Ecology will determine if the revised project requires a new public notice and Water Quality Certification or if a modification to this Order is required.
6. This Order shall be rescinded if the Corps does not issue a permit for this project.
7. The Applicant shall send (per A.2.) a copy of the final 404/Section 10 to Ecology's Federal Permit Manager within two weeks of receiving it.
8. The Applicant shall keep copies of this Order on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.

9. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, and/or necessary data collection, to ensure that conditions of this Order are being met.
10. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
11. In the event of changes or amendments to the state water quality, ground water quality, or sediment standards, or changes in or amendments to the state Water Pollution Control Act (RCW 90.48) or the federal Clean Water Act, Ecology may issue an amendment to this Order to incorporate any such changes or amendments applicable to this project.
12. The Applicant shall ensure that all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each signatory that s/he has read and understands the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins.
13. 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.
14. Failure of any person or entity to comply with the Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.
15. This Order will automatically transfer to a new owner or operator if:
 - a. A written agreement between the Applicant and new owner or operator with the specific transfer date of the Order's obligations, coverage, and liability is submitted to Ecology per condition A.2.;
 - b. A copy of this Order is provided to the new owner or operator; and
 - c. If Ecology does not notify the new Applicant that this Order must be modified to complete the transfer.

B. Notification Requirements

1. The following notification shall be made via phone or e-mail (e-mail is preferred) to Ecology's Federal Permit Manager via e-mail to fednotification@ecy.wa.gov and cc to laura.inouye@ecy.wa.gov. Notifications shall be identified with Order No. 16871 and

include the Applicants name, project name, project location, project contact and the contact's phone number.

- a. Immediately following a violation of state water quality standards or when the project is out of compliance with any of this Orders conditions.
 1. In addition to the phone or e-mail notification, the Applicant shall submit a detailed written report to Ecology within five (5) 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 taken, and any other pertinent information.
- b. At least ten (10) days prior to all pre-construction meetings
- c. At least ten (10) days prior to conducting initial in-water work activities for each in-water work window.
- d. At least seven (7) days within each dredging cycle.

C. Timing

1. This Order shall remain in effect for a period of five (5) years from the date of issuance of this certification. Continuing this project beyond the five-year term of this Order will require the Applicant to obtain review and written approval by Ecology to extend the project for an additional five (5) years. The total term of this Order shall not exceed a total of ten (10) years total.
2. In-water work shall be conducted between August 1 and February 15 of any year, unless otherwise approved by Ecology.
2. Any project change that requires a new or revised Hydraulic Project Approval (HPA) from the Department of Fish and Wildlife should be sent to Ecology for review.

D. Water Quality Monitoring & Criteria

1. Puget Sound/WIRA 9 (Duwamish Green) is categorized as excellent aquatic life use designation per the standards and the criteria of the categorization apply as described in WAC 173-201A-200 (1), except as specifically modified by this Order.
2. This Order does not authorize the Applicant to exceed applicable turbidity standards beyond the limits established in WAC 173-201A-200(1)(e)(i).
3. The Applicant shall conduct water quality monitoring as described in the approved City of Des Moines Marina Entrance Channel Maintenance Dredging Water Quality Monitoring Plan (December 2019) (hereafter referred to as the WQMP) prepared by Anchor QEA and approved on December 4, 2019.
4. The Applicant must provide, in writing, any changes or additions to the WQMP and obtain approval from Ecology's Federal Permit Manager prior to implementation of the changes or additions.

5. Monitoring results shall be submitted monthly to the Ecology Federal Permit Manager, per condition A.2.
6. Mitigation and/or additional monitoring may be required if the monitoring results indicate that the water quality standards have not been met.
7. Visible turbidity anywhere beyond the temporary area of mixing (point of compliance) from the activity shall be considered an exceedance of the standard.

Dredging

8. All dredging is to be done using a clamshell/mechanical dredge. **Use of any other type of dredge requires preapproval from Ecology.**
9. All dredged material shall be placed onto a bottom dump barge and transported by tugboat to Commencement Bay open water non-dispersive disposal site. **Use of any other type of disposal method or location requires pre-approval by Ecology.**
10. Barges shall be kept free of material that could be blown into water.
11. Barges are not allowed to dewater during transit.
12. Barges shall not be allowed to ground-out during in-water construction.
13. All debris larger than two (2) feet in any dimension shall be removed from the dredged sediment prior to disposal at the open water site. Similar-sized debris floating in the dredging or disposal area shall be removed.
14. A pre-dredge meeting is required to be convened prior to the start of each dredging season dredging.
15. At least 14 days prior to the pre-dredge meeting, the Applicant shall submit a *Dredging and Disposal Workplan* (Workplan) to Ecology for review and approval prior to the pre-dredge meeting, per A.2. If the Workplan has not changed from the previous year, the Applicant can provide **written** notice that they will be implementing the prior approved plan.
16. The *Dredging and Disposal Workplan* shall include the following:
 - a. General information including schedule, primary contact, and hours of operation
 - b. Dredged quantities and disposal location
 - c. Dredging procedures and sequence
 - d. Equipment list
 - e. A description of the BMPs to be used to protect water quality
 - f. Debris management

17. Dredging operations shall be conducted in a manner that minimizes the disturbance and siltation of adjacent waters and prevents the accidental discharge of petroleum products, chemicals or other toxic or deleterious substances into state waters.
18. Dredged material shall not be temporarily or permanently stockpiled below the OHWM.
19. During dredging, the Applicant shall have a boat available on site at all times to retrieve debris from the water.
20. Prior to each dredging cycle, the Applicant shall contact the DMMP agencies to determine whether additional sediment testing is required. If additional testing is required, no dredging or disposal shall be conducted until the material has been tested and a suitability determination has been issued. This area ranks low in potential for contamination and the recency determination extends until July, 2025. If needed, contact the DMMO for a possible extension on the suitability determination.
21. Dredging shall be confined to the existing footprint, except as modified by this Order.

Mitigation

22. Pile removal, handling, and disposal shall follow the EPA Region 10 Best Management Practices for Piling Removal and Placement in Washington State, dated February 18, 2016 (Attachment B).
23. If pile removal fails, the pile stub must be cut at least 2 ft below mudline, and the location (latitude and longitude) of all cut piling shall be reported to Ecology within 2 months of removal of all piles.

E. Emergency/Contingency Measures

1. The Applicant shall develop and implement a spill prevention and containment plan for this project.
2. The Applicant shall have adequate and appropriate spill cleanup material available on site at all times during construction.
3. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
4. 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.
5. Work causing distressed or dying fish, discharges of oil, fuel, or chemicals into state waters or onto land with a potential for entry into state waters, is prohibited. If such work,

conditions, or discharges occur, the Applicant shall notify the Ecology Federal Permit Manager per condition B.1. and immediately take the following actions:

- a. Cease operations at the location of the non-compliance.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. 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.
 - d. Immediately notify Ecology's Regional Spill Response Office and the Washington State Department of Fish & Wildlife with the nature and details of the problem, any actions taken to correct the problem, and any proposed changes in operation to prevent further problems.
 - e. Immediately notify the National Response Center at 1-800-424-8802, for actual spills to water only.
6. Notify Ecology's Regional Spill Response Office immediately if chemical containers (e.g. drums) are discovered on-site or any conditions present indicating disposal or burial of chemicals on-site that may impact surface water or ground water.