



**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

PO Box 47600, Olympia, WA 98504-7600 • 360-407-6000

April 27, 2023

U.S. Army Corps of Engineers  
Attn: Caren Crandell  
PO Box 3755  
Seattle, WA 98124-3755

Re: Second Amendment to 401 Water Quality Certification Order No. 15919 for U.S. Army Corps of Engineers Reference No. CENWS-PMP-18-19, Duwamish River and Upper Turning Basin, Duwamish River, King County, Washington.

Dear Caren Crandell:

Enclosed is an amendment to Water Quality Certification Order No. 15919, issued on August 15, 2018, and amended on July 30, 2019, for the above project. We have also included a strikeout version of the Water Quality Certification (WQC) that reflects the changes made. All other conditions of Water Quality Certification No. 15919 remain in effect.

The purpose of this amendment is to extend the expiration date of the WQC for the allowable 5-year period.

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, HQ  
Shorelands and Environmental Assistance Program

Enclosure (2)

By certified mail: 9489 0090 0027 6383 9286 92

Sent via e-mail: [caren.j.crandell@usace.army.mil](mailto:caren.j.crandell@usace.army.mil)

E-cc: Laura Inouye, Ecology  
Loree' Randall, Ecology  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov) - Aquatics ID No. 136344



<b>IN THE MATTER OF GRANTING A WATER</b>	)	<b>WQC ORDER No. 15919, Second Amendment</b>
<b>QUALITY CERTIFICATION TO</b>	)	<b>Corps Reference No. CENWS-PMP-18-19</b>
<b>U.S. Army Corps of Engineers</b>	)	Duwamish River and Upper Turning Basin,
In accordance with 33U.S.C. 1341	)	located within Duwamish River, Seattle, King
(FWPCA §401), RCW 90.48.120, RCW	)	County, Washington
90.48.260 and Chapter 173-201A WAC	)	

U.S. Army Corps of Engineers  
Attn: Caren Crandell  
PO Box 3755  
Seattle, WA 98124-3755

On August 15, 2018, the Washington Department of Ecology (Ecology) issued a 401 Water Quality Certification to the U.S. Army Corps of Engineers for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401). The certification was amended on July 30, 2019.

Ecology received a request on April 13, 2023, to extend the WQC coverage for an additional 5 years, as allowed by condition C1.

WQC Order No. 15919 dated August 15, 2018, is hereby amended as follows:

I. Condition number C1 which reads:

This Order will expire five (5) years from the date of issuance of this certification. An extension for this project beyond the 5 year period will require review and written approval from Ecology, but not to exceed ten years.

Is replaced with:

The Order will expire August 15, 2028.

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

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 Hearings Board (PCHB) within 30 days of the date of receipt. 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 all of the following within 30 days of the date of receipt of this Order:

- File your notice of appeal and a copy of this Order with the PCHB (see filing options below). “Filing” means actual receipt by the PCHB during regular business hours as defined in WAC 371-08-305 and -335. “Notice of appeal” is defined in WAC 371-08-340.
- Serve a copy of your notice of appeal and this Order on the Department of 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.

### **Filing an appeal with the PCHB:**

For the most current information regarding filing with the PCHB, visit:  
<https://eluh.wa.gov/content/11>

### **Address and Location Information**

#### **Street Address:**

##### **Department of Ecology**

Attn: Appeals Processing Desk  
300 Desmond Drive SE  
Lacey, WA 98503

##### **Pollution Control Hearings Board**

1111 Israel RD SW  
STE 301  
Tumwater, WA 98501

#### **Mailing Addresses:**

##### **Department of Ecology**

Attn: Appeals Processing Desk  
PO Box 47608  
Olympia, WA 98504-7608

##### **Pollution Control Hearings Board**

PO Box 40903  
Olympia, WA 98504-0903

**E-Mail Address:**

**Department of Ecology**

Not currently available (see Chapter 371-08 WAC)

**Pollution Control Hearings Board**

Pchb-shbappeals@elaho.wa.gov

## Contact Information

Please direct all questions about this WQC Order to:

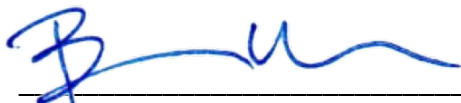
Laura Inouye  
Department of Ecology  
360-515-8213  
Laura.Inouye@ecy.wa.gov

## More Information

- **Pollution Control Hearings Board Website**  
<http://www.elaho.wa.gov/content/11>
- **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>

## Signature

Dated this 27th day of April 2023, at the Department of Ecology, Lacey Washington.



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

**July 30, 2019 First Amendment – This document shows the conditions that have been amended since the original Order was issued August 15, 2018. Therefore, it is not the official certification and should only be used for informational purposes.**

**Conditions modified in the 1<sup>st</sup> Amendment are highlighted in yellow**

**Conditions modified in the 2<sup>nd</sup> Amendment are in blue texts.**

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER # 15919- August 15, 2018</b>
<b>WATER QUALITY</b>	)	<b>1<sup>st</sup> Amendment – July 30, 2019,</b>
<b>CERTIFICATION TO</b>	)	<b>2<sup>nd</sup> Amendment- April 27, 2023</b>
<b>U.S. Army Corps of Engineers</b>	)	<b>Corps Reference No. CENWS-PMP-18-19</b>
in accordance with 33 U.S.C. 1341	)	Duwamish River and Upper Turning Basin,
(FWPCA § 401), RCW 90.48.120, RCW	)	Duwamish River, King County, Washington.
90.48.260 and Chapter 173-201A WAC	)	

U.S. Army Corps of Engineers  
Attn: Chemine Jackels  
P.O. Box 3755  
Seattle, WA 98124-3755

On May 29, 2018, Department of Ecology (Ecology) received a request from the U.S. Army Corps of Engineers for a Section 401 Water Quality Certification. Ecology issued a joint public notice for the project on July 10, 2018.

The proposed project entails dredging of up to 200,000 cubic yards of material per dredging event from the federally authorized footprint of the Duwamish River navigational channel and turning basin (River Miles 4.8-5.5) with disposal at the Dredge Material Management Program's (DMMP) open-water disposal site in Elliott Bay. Maximum dredge depth between stations 254+00 and 275+56 is -17 ft MLLW (-15 plus 2 foot overdredge), and maximum dredge depth of -16 ft MLLW (-15 ft MLLW plus one foot overdredge) between stations 242+00 and 254+00.

**Upon issuance of this certification Order, Order # 8727 is officially rescinded.**

#### **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 U.S. Army Corps of Engineers 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 U.S. Army Corps of Engineers and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent to HQ Office, Attn: Laura Inouye, PO Box 47600, Olympia, WA 98504-7600 or via e-mail to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc to [Laura.Inouye@ecy.wa.gov](mailto:Laura.Inouye@ecy.wa.gov). The submittals shall be identified with Order #15919 and include the Applicant name, project name, project contact, and the contact’s phone number.
3. Work authorized by this Order is limited to the work described in the request received by Ecology on May 29, 2018.
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 water quality certification and public notice or if a modification to this Order is required.

6. 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.
7. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
8. 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.
9. 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.
10. 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 the conditions of this Order and any permits, plans, documents, and approvals referenced in the Order.
11. 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.
12. 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.

## **B. Notification Requirements**

1. Notification shall be made via phone (360-407-6165) or e-mail (e-mail is preferred) to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc to [Laura.Inouye@ecy.wa.gov](mailto:Laura.Inouye@ecy.wa.gov). Notifications shall be identified with Order No. 15919 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.
    - i. 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 conducting initial in-water work activities for each in-water work window established in condition C.2 below.
- c. At least seven (7) days within project completion for each in-water work window.

### C. Timing

1. ~~This Order will expire five (5) years from the date of issuance of this certification. An extension for this project beyond the 5 year period will require review and written approval from Ecology, but not to exceed ten years.~~

The Order will expire August 15, 2028.

2. In water work below the ordinary high water line must occur between October 1~~4~~<sup>15</sup> through December 31 and January 1 through February 15 of any year.

### D. Water Quality Monitoring & Criteria

1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A, except as otherwise authorized by this Order.
2. This Order authorizes a temporary turbidity mixing zones for the following activities per Table 1 below:

**Table 1**

Activity	Point of Compliance
Dredging	600 ft

3. The Applicant shall comply with the final draft Water Quality Monitoring Plan (WQMP) submitted on June 12, 2018 and approved on June 13, 2018. A final plan with appropriate contact information shall be submitted to Ecology for review and approval at least 14 days prior to starting dredging, per A.2.
4. Ecology must approve, in writing, any changes or additions to the WQMP. Changes must be submitted in writing for review and approval least 14 days prior to starting dredging, per A.2.
5. Monitoring results shall be submitted weekly 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.

### Dredging

1. All dredging is to be done using a mechanical (clamshell) dredge. **Use of any other type of dredge requires preapproval from Ecology.**
2. All dredged material will be taken to the Elliott Bay non-dispersive open water disposal site using a bottom dump barge. **Use of any other type of disposal method or location requires pre-approval by Ecology.**
3. Barges shall not discharge material in transit to the disposal site.
4. A pre-dredge meeting is required to be convened prior to the start of dredging. A *Dredging and Disposal Workplan* and final water quality monitoring plan shall be submitted to Ecology to the 401/CZM Federal permit manager at the address shown in Condition A2 for review and approval at least 2 weeks prior to the pre-dredge meeting.
5. 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. Debris management
  - e. Equipment list
  - f. A description of the BMPs to be used to protect water quality
6. 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.
7. Dredged material shall not be temporarily or permanently stockpiled below the OHWM.
8. 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.
9. 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-moderate to high in potential for contamination and the recency determination extends until 2020 for high ranked areas (Section B) and until 2023 for all other areas. If needed, contact the DMMO for a possible extension or volume revision on this suitability determination.

10. The Applicant is only authorized to dredge up to the volume specified within the most recent suitability determination. The Applicant shall provide a new suitability determination to Ecology per condition A2 above if additional material (up to maximal 200,000 cy per event) is to be dredged.
11. Dredging shall be confined to the existing footprint, except as modified by this Order.

#### **E. Emergency/Contingency Measures**

1. The Applicant shall develop and implement a spill prevention and containment plan for this project and shall have spill cleanup material available on site at all times during construction.
2. 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.a. 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.
3. 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.