



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Southwest Region Office
PO Box 47775, Olympia, WA 98504-7775 • 360-407-6300

August 22, 2023

City of Fife Public Works
ATTN: Greg Vigoren
3725 Pacific Highway East
Fife, WA 98424

Re: Second Amendment to 401 Water Quality Certification Order No. 13038 for U.S. Army Corps of Engineers Reference No. NWS-2014-610, I-5/Port of Tacoma Road Interchange Improvements, Wetlands, City of Fife, Pierce County, Washington

Dear Greg Vigoren:

Enclosed is the second amendment to Water Quality Certification Order No. 13038, issued on December 28, 2017, 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 No. 13038 remain in effect.

The purpose of this amendment is to extend the in-water work window and increase the permanent and temporary wetland impacts for Phase II.

If you have any questions, please contact Zach Meyer at (360) 481-9885. The enclosed Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

A handwritten signature in blue ink, appearing to read "Maria Sandercock".

Maria Sandercock, Section Manager
Southwest Region
Shorelands and Environmental Assistance Program

Enclosures (2)

By certified mail: 9489 0090 0027 6094 0258 64

Sent via e-mail: gvigoren@cityoffife.org

WQC Order No. 13038, Corps No. NWS-2014-0610

Aquatics ID No. 135241

August 22, 2023

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e-cc: Sandi Manning, U.S. Army Corps of Engineers
Ross Widener, Widener & Associates
Jordan Widener, Widener & Associates
Zach Meyer, Ecology
Loree' Randall, Ecology
ecyrefedpermits@ecy.wa.gov

**In The Matter of Granting a Water Quality
Certification to City of Fife Public Works
pursuant to 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW
90.48.260 and Chapter 173-201A WAC**

City of Fife Public Works
Attn: Greg Vigoren
3725 Pacific Highway East
Fife, WA 98424

WQC Order No.	13038, Second Amendment
Corps Reference No.	NWS-2014-610
Site Location	I-5/Port of Tacoma Road Interchange Improvements, Wetlands, City of Fife, Pierce County, County, Washington.

On December 28, 2017, the Washington Department of Ecology (Ecology) issued a 401 Water Quality Certification to City of Fife for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401).

Ecology received a request June 22, 2023, to extend the in-water work window and increase the permanent and temporary wetland impacts for Phase II.

Order No. 13038 dated December 28, 2017, is hereby amended as follows:

- I. Project Description - The fourth paragraph of the project description on Page 1 that reads:

The proposed project will permanently fill 7.78 acres of Category III wetlands, and 1.61 acres of Category IV depressional, palustrine emergent wetlands. There will also be temporary impacts to 0.37 acres of Category III and Category IV wetlands. All temporary disturbed wetland areas will be restored upon the completion of adjacent roadwork.

Is replaced with:

The proposed project will permanently fill 10.21 acres of Category III wetlands, and 1.61 acres of Category IV depressional, palustrine emergent wetlands. There will also be temporary impacts to 0.54 acres of Category III and Category IV wetlands. All temporary disturbed wetland areas will be restored upon the completion of adjacent roadwork.

- II. Additional Condition added to Condition B. Timing:

2. In-water work shall be conducted between March 9, 2021, through March 9, 2026, unless otherwise approved by Ecology.

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 mail, in person, or by email (see addresses below).

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

Filing an appeal

Filing with the PCHB

For the most current information regarding filing with the PCHB, visit: <https://elaho.wa.gov/> or call: 360-664-9160.

Service on Ecology

Street Addresses:

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

Mailing Addresses:

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

E-Mail Address:

ecologyappeals@ecy.wa.gov

Contact Information

Please direct all questions about this Order to:

Zach Meyer
Department of Ecology
360-481-9885
Zachary.meyer@ecy.wa.gov

More Information

- Pollution Control Hearings Board Website
<https://elaho.wa.gov>
- 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 22nd day of August 2023, at the Department of Ecology, Lacey, Washington.



Maria Sandercock, Section Manager
Southwest Region
Shorelands and Environmental Assistance Program

This document shows the activities and conditions that have been amended since the original Order was issued. Therefore it is no the official certification and should only be used for information purposes.

December 28, 2017, First Amendment changes are in RED.

August 22, 2023, Second Amendment changes are in BLUE.

IN THE MATTER OF GRANTING A)	ORDER No. 13038
WATER QUALITY)	
CERTIFICATION TO)	Corps Reference No. NWS-2014-0610
The City of Fife)	To construct the I-5/Port of Tacoma Road
ATTN: Mr. Ken Gill)	Interchange Improvement Project, within
in accordance with 33 U.S.C. 1341)	wetlands, City of Fife, Pierce County,
(FWPCA § 401), RCW 90.48.120, RCW)	Washington
90.48.260 and Chapter 173-201A WAC)	

TO: City of Fife
ATTN: Mr. Ken Gill
3725 Pacific Highway East
Fife, WA 98424

On December 4, 2014, the City of Fife submitted the initial Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. Revisions to the JARPA were submitted on January 29, 2015, and April 3, 2015. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on April 15, 2015.

The City of Fife is proposing to replace the existing interchange at I-5 and Port of Tacoma Road. Work will include the reconfiguration of the interchange ramps and 34th Avenue East will be extended as an overpass to connect to the new ramps. Other project activities include the installation of retaining walls, a new traffic signal at Pacific Highway East and 34th Avenue East, stormwater facilities, utility relocations, and road channelization.

The purpose of the project is to improve efficiency of truck freight traffic to and from the Port of Tacoma and reduce traffic congestion on local streets.

~~The proposed project will permanently fill 7.34 acres of Category III wetlands, and 1.61 acres of Category IV depressional, palustrine emergent wetlands. There will also be temporary impacts to 0.57 acres of Category III and Category IV wetlands. All temporarily disturbed wetland areas will be restored upon the completion of adjacent roadway.~~

The proposed project will permanently fill ~~7.78~~ 10.21 acres of Category III wetlands, and 1.61 acres of Category IV depressional, palustrine emergent wetlands. There will also be temporary impacts to ~~0.37~~ 0.54 acres of Category III and Category IV wetlands. All temporarily disturbed wetland areas will be restored upon the completion of adjacent roadway.

Mitigation to compensate for the wetland impacts will occur off-site at the Brookville Gardens and Oxbow Advance Mitigation Sites. The mitigation will be constructed at least two years in advance of the proposed project impacts and will consist of 10.9 acres of wetland creation between both of the mitigation sites and 4.36 acres of existing wetland will be enhanced at the Oxbow Site. The proposed mitigation will have 9.40 acres of designated buffer.

The project is located at the I-5 Interchange at the Port of Tacoma Road. Work will be from SR 509 to 20th Street E, Fife, Pierce County, Washington, 98424; Sections 2,11,12; Township 20; North; Range 3 East; WRIA 10, Puyallup-White Watershed.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined 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 not violate 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 Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC), or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments occurring as a result of project construction or operations.

A. General Conditions:

1. For purposes of this Order, the term "Applicant" shall mean the City of Fife and its agents, assignees, and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Southwest Regional Office, Attn: Federal Permit Manager, SEA Program, P.O. Box 47775, Olympia, WA 98504-7775, or loch461@ecy.wa.gov. Any submittals shall reference Order No. **13038** and Corps No. **NWS-2014-0610**.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on April 3, 2015. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.

4. Within 30 days of receipt of an updated JARPA, Ecology will determine whether the revised project requires a new water quality certification and public notice or whether a modification to this Order is required.
5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue a Section 404 permit.
6. Copies of this Order shall be kept 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. The Applicant shall ensure that all appropriate project engineers and contractors at the project site 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 project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents, and approvals. These statements shall be provided to Ecology before construction begins at the project.
10. 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.
11. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

B. Timing:

1. This Order shall remain in effect for a period of twelve (12) years from the date of issuance unless otherwise modified by Ecology.
2. *In-water work shall be conducted between March 9, 2021, through March 9, 2026, unless otherwise approved by Ecology.*

C. Notification Requirements:

1. The Applicant shall provide a copy of the final Corps Permit to Ecology's Southwest Regional Office Federal Permit Manager, in accordance with condition A.2 above, within two (2) weeks of receipt of the permit.

2. The Applicant shall provide written notification (FAX, e-mail, or mail) to Ecology's Southwest Regional Office Federal Permit Manager in accordance with condition A.2 above for the following activities:
 - a. At least ten (10) days prior to the onset of any work on site
 - b. Immediately following a violation of the state water quality standards or any condition of this Order
 - c. Within fourteen (14) days after completion of project construction.
3. If project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit a written construction status report. Status reports shall be submitted every 12 months thereafter until project construction is complete.

D. Construction, Equipment Staging and Maintenance:

1. The project shall obtain and comply with the conditions of the current Construction Stormwater General Permit (National Pollutant Discharge Elimination System – NPDES) issued for this project.
2. Construction stormwater, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
3. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
4. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state, including wetlands.
5. All construction debris shall be properly disposed of in a manner to prevent it from entering wetlands and/or wetland buffers.
6. All work within the project limits shall be clearly marked/staked prior to construction. Clearing limits, travel corridors, and stockpile sites shall be clearly marked. Sensitive areas and buffers that are to be protected from disturbance shall be marked so as to be clearly visible to equipment operators. All project staff shall be trained to recognize construction fencing or flagging that identifies sensitive area boundaries. Equipment shall enter and operate within the marked clearing limits corridors and stockpile areas.
7. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in a confined area in order to prevent contamination to waters of the state. Fueling areas will be provided with adequate spill containment.
8. Appropriate BMPs shall be implemented to minimize track-out during construction.
9. Staging area will be located a minimum of 50 feet and, where practical, 200 feet from waters of the state (including wetlands), unless authorized by Ecology.

10. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working area shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
11. Clean Fill Criteria: The Applicant shall ensure that fill (soil) placed for the proposed project does not contain toxic materials in toxic amounts.

E. Wetland Compensatory Mitigation Conditions:

1. The Applicant shall mitigate wetland impacts as described in the *Wetland Mitigation Plan, I-5/Port of Tacoma Road Interchange Improvement Project, City of Fife, Pierce County Washington* (hereafter referred to as the "Mitigation Plan") prepared by Widener & Associates, dated November 2015, or as modified by this Order or revised and approved by Ecology.
2. The Applicant shall submit any changes to the Mitigation Plan in writing to Ecology (per Condition A.2 above) for review and approval **before** work begins.
3. Advance mitigation credit was granted for the mitigation sites with the expectation that the mitigation would be constructed two years prior to the wetland impacts. If construction of the mitigation sites has not been completed two years prior to the wetland impacts associated with this project, Ecology will require additional compensation.
4. Prior to impacting wetlands at the project site, the Applicant shall submit documentation to Ecology (per Condition A.2, above) that the mitigation sites are meeting the performance standards set forth in the Mitigation Plan. This documentation shall include:
 - a. An as-built report, including plan sheets, documenting site conditions at Year Zero. The as-built report must:
 - Be submitted within 90 days of completion of construction and planting of the mitigation sites. Include one hard copy and one electronic file.
 - Include the information listed in Attachment B (Information Required for As-Built Reports.)
 - b. A copy of the Year 1 and Year 2 Monitoring Reports. The Monitoring Reports should include the information contained in Attachment C. (Information Required for Monitoring Reports.)
 - c. A copy of the Site Protection Real Estate Instrument.
5. The Applicant shall provide Ecology with a copy of each monitoring report for the remainder of the ten-year monitoring period (per Condition A.2 above.)
6. If the Applicant has not met all conditions and performance standards for the proposed project mitigation Ecology may require additional monitoring, additional mitigation, or both.
7. Until the Applicant has received written notice from Ecology that the Mitigation Plan has been fully implemented, the Applicant's obligation under Condition E.1. to mitigate for wetlands impacts is not met.

F. Emergency/Contingency Measures:

1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
2. 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.
3. 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 waters of the state.
4. 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, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant or operator shall immediately take the following actions:
 - a. Cease operations that are causing the compliance problem.
 - 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 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.
 - d. 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.
 - e. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's Southwest Federal Project Coordinator at (360) 407-6926 or (360) 407-6300.
 - f. Submit a detailed written report to Ecology's Federal Permit Manager 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.

Compliance with this condition 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.