



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Region Office
PO Box 330316, Shoreline, WA 98133-9716 • 206-594-0000

September 21, 2023

City of Covington
ATTN: Don Vondran
16720 SE 271st Street, Suite 100
Covington, WA 98042

Re: Amendment to 401 Water Quality Certification Order No. **13652** for U.S. Army Corps of Engineers Reference No. **NWS-2015-343**, SE 272nd Street (SR 516) between Jenkins Creek and 185th Place SE Roadway Improvements, Wetlands, Jenkins Creek, and Stream 2, Covington, King County, Washington

Dear Delanie Stegman:

Enclosed is an amendment to Water Quality Certification Order No. 13652, issued on October 14, 2016, 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. 13652 remain in effect.

The purpose of this amendment is to extend the in-water work window.

If you have any questions, please contact Doug Gresham at (425) 429-1846. The enclosed Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

Joe Burcar, Section Manager
Northwest Region Office
Shorelands and Environmental Assistance Program

Enclosure (2)

By certified mail: 9171 9690 0935 0233 1188 45

Sent via e-mail: dvondran@covingtonwa.gov

Second Amendment to WQC Order No. 13652
Aquatics ID No. 135254, Corps No. NWS-2015-343
September 21, 2023
Page 2 of 2

E-cc: Colin Greenan, U.S. Army Corps of Engineers
Sam Harrison, O'Neill Service Group
Doug Gresham, Department of Ecology
Loree' Randall, Department of Ecology
ecyrefedpermits@ecy.wa.gov

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

City of Covington
Attn: Don Vondran
16720 SE 271st Street, Suite 100
Covington, WA 98042

WQC Order No.	13652, Second Amendment
Corps Reference No.	NWS-2015-343
Site Location	SE 272nd Street (SR 516) between Jenkins Creek and 185th Place SE Roadway Improvements project located within wetlands, Jenkins Creek, and Stream 2, Covington, King County, Washington.

On October 14, 2016, the Washington Department of Ecology (Ecology) issued a 401 Water Quality Certification to City of Covington for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401).

Ecology received a request September 7, 2023, to extend the in-water work window due to delays caused by utilities.

Order No. 13652 dated October 14, 2016, is hereby amended as follows:

I. Condition number G1. which reads:

In-water work shall be conducted between June 16 and September 15 of any year, unless otherwise approved by Ecology.

Is replaced with:

In-water work shall be conducted between June 16 and September 29 of any year, 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://eluh0.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:

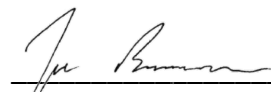
Doug Gresham
Department of Ecology
(425) 429-1846
Doug.Gresham@ecy.wa.gov

More Information

- **Pollution Control Hearings Board Website**
<https://eluhwa.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 21st day of September, 2023 at the Department of Ecology, Shoreline Washington.



Joe Burcar, Section Manager
Northwest Region Office
Shorelands and Environmental Assistance Program

This document shows the activities and conditions that have been amended since the original WQC Order was issued. Therefore, it is not the official certification and should be used for information purposes only.

IN THE MATTER OF GRANTING A) ORDER #13652, 1st Amendment, 2nd
WATER QUALITY) Amendment
CERTIFICATION TO) Corps Reference #NWS-2015-343
City of Covington) SE 272nd Street (SR516) between Jenkins Creek
in accordance with 33 U.S.C. 1341) and 185th Place SE Roadway Improvements
(FWPCA § 401), RCW 90.48.120, RCW) Project; Wetlands, Jenkins Creek, and Stream 2,
90.48.260 and Chapter 173-201A WAC) Covington, King County, Washington.

TO: City of Covington
Attn: Don Vondran, Public Works Director
16720 SE 271st Street, Suite 100
Covington, WA 98042

On April 20, 2015, City of Covington submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A request to withdraw and re-apply for a 401 Certification was submitted on March 6, 2016. 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 December 7, 2015, and Ecology issued a second public notice on April 15, 2016.

The project entails widening a portion of SE 272nd Street (SR 516), from a two-lane to a five-lane roadway. The project also would improve fish passage by replacing an existing box culvert with a bridge. Other activities include a signal replacement, illumination, curb, gutter, sidewalks, planters and other landscaping, bike lanes, access control features for safety, utility relocations, and stormwater facilities. A sanitary sewer line within the road right-of-way also would be relocated along with a water system main upgrade.

Fill would be placed in 0.42 acre of wetland, and 1.04 acres of wetlands would be temporarily impacted to widen the roadway. The project also would result in 1.1 acres of permanent wetland buffer impacts and 0.3 acre of temporary wetland buffer impacts.

Impacts would be mitigated on-site through realignment of a portion of the Jenkins Creek channel and replacement of the box culvert with a bridge, as well as purchase of credits from the King County Mitigation Reserves Program.

The project is located at SE 272nd Street (SR 516) between Jenkins Creek and 185th Place SE, Covington, King County, Washington, in wetlands, Jenkins Creek, and Stream 2, Sections 30 & 31, T. 22N, R. 6E and Sections 25 & 36, T. 22N, R. 5E, WRIA 9.

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.
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 it has reasonable assurance 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 because of project construction or operations.

A. General Conditions:

- A1. For purposes of this Order, the term “Applicant” shall mean City of Covington and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology’s Northwest Regional Office, Attn: 401/CZM Federal Permit Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #13652 and Corps Reference #NWS-2015-343.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on April 20, 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.

- A4. Within 30 days of receipt of an updated JARPA, 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.
- A5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual Section 404 permit.
- A6. The Applicant shall provide to Ecology's 401/CZM Federal Permit Manager a copy of the final Corps permit within two weeks of receipt of the permit. A copy shall be submitted per condition A2 above.
- A7. 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.
- A8. 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.
- A9. 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.
- A10. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understood 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 or mitigation sites.
- A11. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state (including wetlands) or related aquatic resources, except as specifically provided for in conditions of this Order.
- A12. 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 its terms.

B. Native Planting Conditions:

B1. Except as modified by this Order, the native planting area is described in *SE 272nd Street (SR 516) Extension Project Mitigation Plan* (hereafter, Mitigation Plan), Environmental Science Associates (ESA), dated September 2016.

B2. In addition to conditions in the above-referenced planting plan, the following requirements shall be conditions of this Order:

- a. As-Built Report (Year 0): A report that includes the information in Attachment B documenting the topographic contours and plants installed in the mitigation areas must be prepared when site construction and planting are completed. The report shall include the following:
 - i. Vicinity map showing site access.
 - ii. Drawings that clearly identify in plain view the location and square footage of the planted area.
 - iii. The installed planting scheme showing approximate locations of plants and the time of planting.
 - iv. Photographs of planting areas taken from permanent reference points.
 - v. Locations of photo points and sampling sites.
 - vi. A description of any changes to the mitigation plan that occurred during construction.
 - vii. Provisions for maintenance and monitoring of plants.

A copy of the as-built report shall be sent to Ecology's Northwest Regional Office, per Condition A2, within 60 days of completing installation of the mitigation measures.

- b. Monitoring: The condition of riparian plantings shall be recorded in years 1, 3, 5, and 7 after the Year 0 report. Monitoring reports should document plant survival and vigor and include representative photos from permanent locations. Copies of all monitoring reports, that shall include the information listed in Attachment C, shall be submitted to Ecology per Condition A2 above by December 31 of each year that they are due.

- c. Performance Standards:

The project shall meet the following performance standards:

- Planting cover shall meet the performance standards listed in Mitigation Plan Objectives 2 and 3 (pp. 11-12).

- Invasive non-native species shall meet the performance standards listed in Mitigation Plan Objective 4 (p. 12) except that cover of Japanese knotweed shall be 0% for each year during the monitoring period.
- d. Maintenance: The Applicant is responsible for maintenance and protection of the native vegetation planting area both throughout and after the 10-year monitoring period for riparian plantings. All plants that fail to survive for one (1) year after planting shall be replaced with the same species, or an appropriate native plant alternative, during the first available planting season. Please note species, numbers, and approximate locations of all replacement plants in the subsequent monitoring report.
- C. Wetland Compensatory Mitigation Conditions:**
- C1. The Applicant shall mitigate wetland impacts as described in *SE 272nd Street (SR 516) Extension Project Draft In-Lieu Fee Use Plan* prepared by ESA, dated September 2016, or as revised and approved by Ecology.
- C2. The Applicant shall obtain a Statement of Sale from the Sponsor as documentation of purchase of 32.17 credits for this impact project (see A2). The Applicant shall submit a copy of the Statement of Sale to Ecology (see A2) before impacting wetlands for the debit project.
- Documentation from the Sponsor shall include:
- a. Ecology's Order number.
 - b. Order issuance date.
 - c. Description of mitigation credits purchased.
 - d. Signatures from the Sponsor and the Applicant.
- C3. The Applicant shall notify and submit in writing to Ecology (see A2) any proposed changes to the amount of wetland impacts, revision to the mitigation plan, and/or submittal of new information (see C2) for review and approval before work begins.
- C4. The Applicant shall complete the purchase of credits before the impacts to wetlands occur, or Ecology may require additional compensation to account for additional temporal loss.
- C5. If the Applicant has not purchased credits or completed the SE 272nd Street (SR516) between Jenkins Creek and 186th Place SE Roadway Improvements project within 13 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of:
- a. The SE 272nd Street (SR516) Extension Project.

b. When ILF credits will be purchased.

With the:

c. Reason for the delay.

d. Expected date of completion.

- i. The Applicant shall submit an updated written notification every 12 months thereafter until the SE 272nd Street (SR516) Extension Project is complete and the required credits are purchased.

D. Water Quality Conditions:

- D1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-200(1)(e)(i) or 173-201A-200(1)(g).
- D2. The Applicant shall monitor water quality during in-water construction and implement best management practices according to the *SE 272nd Street (SR 516) Extension Project Water Quality Monitoring and Protection Plan*, dated September 2016, or as modified by this Order, or revised and approved by Ecology.
- D3. Background samples shall be collected at the same frequency as the point of compliance samples.
- D4. If no exceedances are detected, results of water quality sampling, as determined by the Water Quality Monitoring and Protection Plan, shall be forwarded to Ecology on a monthly basis in accordance to Condition A2.
- D5. Notification of exceedances that are detected through water quality sampling shall be made to Ecology within 24 hours of occurrence. Notification shall be made with reference to Order #13652, Attn: 401/CZM Federal Permit Manager, by telephone at (425) 649-7129 or (425) 649-7000, or by fax to (425) 649-7098. The Applicant shall, at a minimum, provide Ecology with the following information:
 - i. A description of the nature and cause of exceedance.
 - ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance.
 - iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
 - iv. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of

the exceedance, turbidity results and location, photographs, and any other pertinent information.

E. Conditions for Construction Activities:

General Conditions:

- E1. Applicant shall obtain and comply with a Construction Stormwater General Permit for this project.
- E2. 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.
- E3. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- E4. All construction debris shall be properly disposed of in a manner to prevent it from entering the waters of the state.
- E5. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
- E6. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- E7. Clean Fill Criteria: Applicant shall ensure that fill (soil) placed for the proposed project does not contain toxic materials in toxic amounts.
- E8. If cast in place, wet concrete/grout shall be prevented from entering waters of the state. Forms for any concrete/grout structure shall be constructed to prevent leaching of wet concrete/grout. Impervious materials shall be placed over any exposed concrete/grout not lined with the forms that will come in contact with state waters. Forms and impervious materials shall remain in place until the concrete/grout is cured.
- E9. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology that fisheries resources may be adversely affected.

In-Water Conditions:

- E10. The Applicant shall not cross the stream with heavy equipment and, to the extent practicable, shall prevent heavy equipment from entering any portion of the existing low-flow channel.
- E11. Flow shall be slowly introduced into the realigned channel, upon completion of instream work, in order to minimize scour and turbidity.

F. Emergency/Contingency Measures:

- F1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- F2. 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.
- F3. 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.
- F4. 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, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:
 - a. Cease operations at the location of the violation or spill.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. 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 401/CZM Federal Permit Manager at (425) 649-7129 or (425) 649-7000.
 - d. 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.

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.

G. Timing Requirements

- G1. In-water work shall be conducted between ~~July 1 and September 15~~ June 16 and September 15 29 of any year, unless otherwise approved by Ecology.
- G2. This Order is valid until all compliance requirements in the Order have been met and the applicant has received written notification from Ecology to that effect.

H. Reporting and Notification Requirement Conditions

- H1. Applicant shall provide notice to Ecology's 401/CZM Federal Permit Manager:
- At least three (3) days prior to the start of construction.
 - Within 14 days after completion of construction at the project site.
- Notification, referencing Corps Reference #NWS-2015-343, Order #13652 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.
- H2. If the project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit per Condition A2 a written construction status report and submit status reports every 12 months until construction and mitigation plantings are completed.