



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

August 22, 2024

Seattle City Light
ATTN: Megan Waters
PO Box 34023
Seattle, WA 98124

Re: Amendment to 401 Water Quality Certification Order No. 16026 for U.S. Army Corps of Engineers Reference No. NWS-2018-408, Diablo Lake New Fuel Dock Project, Diablo Lake, Diablo, Whatcom County, Washington

Dear Megan Waters:

Enclosed is an amendment to Water Quality Certification Order No. 16026, issued on September 25, 2018, 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 Order No. 16026 remain in effect.

The purpose of this amendment is to modify condition F1. in-water work window to align with the window issued by Federal Energy Regulatory Commission (FERC).

If you have any questions, please contact Sonia Mendoza at (360) 918-1342. The enclosed Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

Loree' Randall, Section Manager
Aquatic Permitting & Protection Section
Shorelands and Environmental Assistance Program

Enclosure (2)

By certified mail: 9489 0090 0027 6391 8521 49

Sent via e-mail: Megan.Waters@seattle.gov

E-cc: Lydia Baldwin, U.S. Army Corps of Engineers
Annette Pearson, Seattle City Light

First Amendment to Order No. 16026
Aquatics No. 136233, Corps No. NWS-2018-408
August 22, 2024
Page 2 of 2

Chad Yunge, Ecology
Evan Dobrowski, Ecology
Sonia Mendoza, Ecology
ecyrefedpermits@ecy.wa.gov

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

Seattle City Light
Attn: Megan Waters
PO Box 34023
Seattle, WA 98124

WQC Order No.	16026, First Amendment
Corps Reference No.	NWS-2018-408
Site Location	Diablo Lake New Fuel Dock project located within Diablo Lake, Diablo, Whatcom County, Washington.

On September 25, 2018, the Washington Department of Ecology (Ecology) issued a 401 Water Quality Certification to Seattle City Light for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401).

Ecology received a request on 7/11/2024, to modify in-water work window to align with the window issued by Federal Energy Regulatory Commission (FERC).

WQC Order No. 16026 dated September 25, 2018, is hereby amended as follows:

I. Condition number F1. which reads:

In-water work shall be conducted between September 1 and November 30 or April 1 and June 30 of any year, unless otherwise approved by Ecology.

Is replaced with:

In-water work shall be conducted between December 1, 2024 – March 31, 2025, 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:

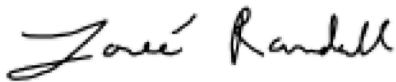
Sonia Mendoza
Department of Ecology
(360) 918-1342
Sonia.mendoza@ecy.wa.gov

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 2024 at the Department of Ecology, Lacey, Washington.



Loree' Randall, Section Manager
Aquatic Permitting & Protection Section
Shorelands and Environmental Assistance Program

This document shows the conditions that have been amended since the original 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 #16026, First Amendment
WATER QUALITY) Corps Reference #NWS-2018-408
CERTIFICATION TO) Diablo Lake New Fuel Dock Project; Diablo
Seattle City Light) Lake, Diablo, Whatcom County, Washington.
in accordance with 33 U.S.C. 1341)
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: Seattle City Light
Attn: Shelly Adams
PO Box 34023
Seattle, WA 98124

On April 25, 2018, Seattle City Light submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A 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 June 18, 2018.

The project entails replacement of an existing fuel dock with a new fuel dock, replacement of an existing riprap bulkhead with a crib wall, and beach grading.

Mitigation for removal of shoreline vegetation includes restoration plantings in the new crib wall and shoreline vegetation enhancement on the opposite side of the cove from the existing barge landing.

The project is located near the Diablo Boathouse, Diablo, Whatcom County, Washington, Diablo Lake, Section 4, T. 37 N., R. 13E., WRIA 4.

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 as a result of project construction or operations.

A. General Conditions:

- A1. For purposes of this Order, the term “Applicant” shall mean Seattle City Light and its agents, assignees, and contractors.
- A2. All submittals required by this Order shall be sent to Ecology’s Northwest Regional Office, Attn: 401/CZM Federal Permit Manager, Shorelands and Environmental Assistance Program, 3190 160th Avenue SE, Bellevue, WA 98008, OR via email to fednotification@ecy.wa.gov and cc: Rebekah.Padgett@ecy.wa.gov. The submittals shall be identified with Order #16026 and include the Applicant name, project name, project contact, and the contact’s phone number.
- A3. Work authorized by this Order is limited to the work described in the following documents:
- JARPA received by Ecology on April 25, 2018.
 - Email from Shelly Adams, Seattle City Light, to Rebekah Padgett, Ecology, RE: Diablo Lake New Fuel Dock Project, dated August 27, 2018.

The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in this 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 Corps 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. 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 conditions of this Order are being met.
- A9. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines 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 provide to Ecology a signed statement (see Attachment A for an example) that s/he has read and understands the conditions of this Order and any permits, plans, documents, and approvals referenced herein. The signed statement shall be submitted to Ecology per Condition A2 at least seven days prior to start of in-water work.
- A11. The Applicant shall ensure 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.
- A12. 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.
- A13. 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. Project Mitigation Conditions:

- B1. The Applicant shall implement the *Diablo New Fuel Dock Mitigation and Habitat Restoration Plan*, prepared by Seattle City Light, dated April 2018 [hereafter referred to as "Mitigation Plan"], or as modified by this Order or revised and approved by Ecology.

- B2. The Applicant shall submit any changes to the Mitigation Plan in writing to Ecology (see A2) for review and approval prior to implementing the change.
- B3. The Applicant shall submit an As-Built Report per Condition A2 within 90 days of completion of construction, describing any changes in construction related to the mitigation components, and including photos of the plantings.
- B4. The Applicants shall submit monitoring reports annually, by December 31 of each year, to Ecology (see A2) documenting mitigation site conditions for years 1, 2, 3, and 5.

C. Water Quality Conditions:

- C1. The Applicant shall monitor water quality during in-water construction according to the *Diablo New Fuel Dock Water Quality Monitoring Plan*, prepared by Seattle City Light, received by Ecology on September 21, 2018 [hereafter referred to as “Water Quality Monitoring Plan”], or as modified by this Order or revised and approved by Ecology.
- C2. Ecology must approve, in writing, any changes or additions to the Water Quality Monitoring Plan.
- C3. Results of water quality sampling and notification of exceedances shall be submitted to Ecology per Condition A2 on a monthly basis.
- C4. Mitigation and/or additional monitoring may be required if the monitoring results indicate that the water quality standards have not been met.

D. Conditions for Construction Activities:

General Conditions:

- D1. 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.
- D2. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- D3. All construction debris shall be properly disposed of in a manner to prevent it from entering the waters of the state.

- D4. 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.
- D5. 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.
- D6. Clean Fill Criteria: Applicant shall ensure fill (soil, gravel) placed for the proposed project does not contain toxic materials in toxic amounts.

In-Water Conditions:

- D7. 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.
- D8. All manmade debris deposited below the Ordinary High Water Line (OHWL) within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Concrete rubble, metal debris, and other debris in the construction work corridor that have washed into lake areas shall be removed from the project area.
- D9. Work shall be conducted in the dry, as practicable.
- D10. A turbidity curtain shall be properly deployed and maintained during in-water activities in order to minimize turbidity and re-suspension.
- D11. Project activities shall be conducted to minimize siltation of the beach area and bed.

Pile Driving:

- D12. The two steel piles shall be installed using a vibratory hammer whenever possible.

E. Emergency/Contingency Measures:

- E1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- E2. 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.

- E3. 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.
- E4. Any work 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:
- Cease operations at the location of the violation or spill.
 - Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - 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.
 - Submit a detailed written report to Ecology within five 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.

F. Timing Requirements

- F1. ~~In-water work shall be conducted between September 1 and November 30 or April 1 and June 30 of any year, unless otherwise approved by Ecology.~~

In-water work shall be conducted between December 1, 2024 – March 31, 2025, unless otherwise approved by Ecology.

- F2. This Order is valid until ~~December 27, 2027, November 30, 2021,~~ unless otherwise approved by Ecology. (WQC end date approved by via-email on 5/14/2020, to accommodate project schedule change and 5-years of monitoring for mitigation plantings.)

G. Reporting and Notification Requirement Conditions

- G1. Applicant shall provide notice to Ecology per Condition A2:

- At least three (3) days prior to the start of construction.
- Within 14 days after completion of construction at the project site.
- Immediately after any work that is out of compliance with the provisions of this Order.

G2. 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.

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