



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

May 15, 2025

Vigor Industrial LLC
Attn: Eagle Hilton
1801 16th Ave
Seattle WA 98122

Re: Amendment to 401 Water Quality Certification Order No. 18138 for U.S. Army Corps of Engineers Reference No. NWS-2019-0336, Vigor Industrial Fender Pile replacement, Elliott Bay, in King County, Washington

Dear Eagle Hilton:

Enclosed is an amendment to Water Quality Certification Order No. 18138, issued on May 18, 2020, 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. 18138 remain in effect.

The purpose of this amendment is to extend the duration of the certification. This extension is needed due to delays in obtaining required authorizations, resulting in inability to start the project prior to expiration of the 401 WQC.

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,

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

Enclosure (2)

First Amendment to Order No. 18138
Aquatics No. 137430, Corps No. NWS-2019-0336
May 15, 2025
Page 2 of 2

By certified mail: 91 7199 9991 7036 8715 4669

Sent via e-mail: Eagle.Hilton@vigor.net

E-cc: Rory Lee, U.S. Army Corps of Engineers
Erin Murray, Floyd/Snider
Laura Inouye, Ecology
Erin Hanlon Brown, Ecology
ecyrefedpermits@ecy.wa.gov

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

Vigor Industrial LLC
Attn: Eagle Hilton
1801 16th Ave
Seattle WA 98122

WQC Order No.	18138, First Amendment
Corps Reference No.	NWS-2019-0336
Site Location	Vigor Industrial Fender Pile replacement, Elliott Bay, in King County, Washington.

On May 18, 2020, the Washington Department of Ecology (Ecology) issued a 401 Water Quality Certification to Vigor Industrial, LLC (Eagle Hilton) for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401).

Ecology received a request on March 14, 2025, to amend the WQC to extend the duration of the certification. This extension is needed due to delays in obtaining the required authorizations, resulting in an inability to start the project prior to the expiration of the WQC.

WQC Order No. 18138 dated May 18, 2020, is hereby amended as follows:

I. Condition number C1 which reads:

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.

Is replaced with:

This WQC Order is effective upon issuance of the U.S. Corps of Engineers (Corps) permit for this project and will remain valid until November 8, 2032.

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 information 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 by 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.

Address and Location Information

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:

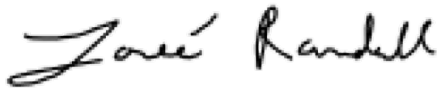
Laura Inouye
Department of Ecology
360-515-8213
Laura.Inouye@ecy.wa.gov

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 15th day of May 2025 at the Department of Ecology, Lacey, Washington.



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

This document shows the activities and/or 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 # 18138, First Amendment
WATER QUALITY)	Corps Reference No. NWS-2019-0336
CERTIFICATION TO)	Vigor Industrial Fender Pile replacement, Elliott
Vigor Industrial, LCC)	Bay, in King 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)	

Vigor Industrial LCC
ATTN: Eagle Hilton
1801 16th Ave
Seattle WA 98122

On March 17, 2020, the Department of Ecology (Ecology) received Vigor Industrial's request for a Section 401 Water Quality Certification (WQC) for the Vigor Industrial Fender Pile Removal. Ecology issued a public notice on April 1, 2020.

The proposed project entails in-water repair and maintenance of fender piles on Piers 3, 4, 5, and 6 at the Vigor facility. Up to 248 fender piles would be replaced with a maximum of 100 piles per year.

This project is located in section NW7, township 24N, and range 4E and in section NW12, township 24N, and range 3E, WRIA 9 in Elliott Bay.

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 Vigor Industrial, LCC 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 Vigor Industrial, LCC (Vigor) and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent to 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 No. 18138 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 Joint Aquatic Resource Permit Application (JARPA) received by Ecology on March 17, 2020.
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 is not effective until the US Army Corps of Engineers issues a permit for this project.
7. The Applicant shall send (per A.2.) a copy of the final Corps permit 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 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 7 days prior to start of in-water work.
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.
16. Conditions in this Order apply to all planned phases of the construction and the mitigation for this project.

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. 18138 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 Order's 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 project completion for each in-water work window.

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.~~

~~This WQC Order is effective upon issuance of the U.S. Corps of Engineers (Corps) permit for this project and will remain valid until November 8, 2032.~~

2. In-water work shall be conducted between August 1 to February 15 of any year, unless otherwise approved by Ecology.
3. 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. Elliott Bay is categorized excellent aquatic life use designation per the standards and the criteria of the categorization apply as described in WAC 173-201A-210 (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 210(1)(e)(i)
3. The Applicant shall conduct water quality monitoring as described in the approved draft Water Quality Monitoring and Protection Plan (hereafter referred to as the WQMPP) prepared by Erin Murray (Floyd/Snider) submitted April 17, 2020. The draft WQMPP will be updated with contractor-specific information and provided at least 2 weeks prior to each in-water work window.

4. The Applicant must provide, in writing, any changes or additions to the WQMPP 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.
8. If water quality exceedances for turbidity are observed outside the point of compliance, work shall cease immediately and the Applicant or the contractor shall assess the cause of the water quality problem and take immediate action to stop, contain, and correct the problem and prevent further water quality turbidity exceedances.

E. Pile Removal and Placement

1. The Applicant shall prepare a **Work Plan** and a **Spills Prevention Control and Countermeasures Plan** for submittal to Ecology for review and approval at least 2 weeks prior to each in-water work window.
2. The piling removal BMPs in Attachment B will be implemented, unless otherwise approved by Ecology, with the following exceptions:
 - a. If a pile breaks and cannot be fully pulled, then it shall be cut off at mudline.
 - b. A minimum 1 foot clean sand will be placed over the disturbed area unless applicant provides documentation that 1 ft. clean sand cover is still present.
3. Within 30 days from project completion (each work window), the Applicant shall report the number and location of piles removed and placed, and provide the GIS coordinates for any piles that were cut at the mudline and left in place.
4. The Applicant shall only conduct transloading at a facility that has a National Pollutant Discharge Elimination System (NPDES) permit, unless otherwise authorized by Ecology.
5. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
6. An absorbent boom will be deployed around the work area during removal of piles.
7. All debris, excess sediment, and other solid waste material shall be properly managed and disposed of in an upland disposal site approved by the appropriate regulatory authority.

8. 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.
9. Barges shall not be allowed to groundout during in-water construction.
10. Barges shall be kept free of material that could be blown into water.
11. Return water discharged from the barges into waters of the state at the project site shall be filtered through appropriate media to remove turbidity and sheens.
12. Barges shall not dewater or otherwise discharge during transit or at the location where piles transloading facility

F. Emergency/Contingency Measures

1. The Applicant shall have adequate and appropriate spill cleanup material available on site at all times during construction.
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 state waters.
4. 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.
5. 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.

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