



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

May 27, 2020

U.S. Army Corps of Engineers, Seattle District
Attn: Scott Pozarycki
PO Box 3755
Seattle WA 98124-3755

RE: First Amendment to Section 401 Water Quality Certification Order #16624, Emma Schmitz
(Alki) Coastal Erosion Control: Seawall Replacement on Puget Sound in the City of Seattle, King
County, Washington

Dear Scott Pozarycki:

Enclosed is an amendment to Water Quality Certification (WQC) Order # 16624 issued on August 15, 2019, for the above project. We have also included a strikeout version of the WQC that reflects the changes made. All other conditions of WQC # 16624 remain in effect.

The Department of Ecology was notified on April 6, 2020 by the Corps of Engineers of concerns with heavy equipment crossing an existing sewer pipe during the in-water work to build the seawall and possibly cracking the pipe. Based on the information provided Ecology is amending the Section 401 WQC to add conditions allowing equipment storage on a temporary, floating platform waterward of the work area and within the construction limits. Conditions regarding the existing staging were also amended to clarify it applied to an existing upland location for construction materials and other smaller equipment. Additionally, the order of the conditions applying to construction was adjusted to provide better clarity with the changes being made.

If you have any questions, please contact Penny Kelley at 260-280-8856 or penny.kelley@ecy.wa.gov. The enclosed Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

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

E-CC: Katie Whitlock, U.S. Army Corps of Engineers
Laura Arbor, WDFW
Channing Syms, WDFW
Maria Sandercock, Ecology
Loree' Randall – HQ
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING) ORDER #16624
A WATER QUALITY) First Amendment
CERTIFICATION TO)
U.S. Army Corps of Engineers)
In accordance with 33U.S.C. 1341)
(FWPCA §401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: U.S. Army Corps of Engineers, Seattle District
PO Box 3755
Seattle WA 98124-3755

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

Ecology received notification on April 6, 2020 from the Corps of Engineers of the need for construction changes due to concerns over equipment crossing existing infrastructure in the project area and causing damage. After reviewing the information, Ecology determined that the Section 401 Certification would need to be amended in order to allow these changes.

Order No. 16624 dated August 15, 2019 is hereby amended as follows:

I. The following information was added to the project description:

To prevent damage to the existing sewer pipe located adjacent to the seawall in the upland area, a temporary, floating staging area will be placed waterward within the limits of construction. This area will provide temporary storage of heavy equipment in order to minimize weight placed on the pipe and avoid cracking it.

II. Condition number E.7 which reads:

Staging areas will be located a minimum of 50 feet and, where practical, 200 feet, from waters of the state including wetlands. If a staging area must be located within 50 feet of waters of the state, then the Applicant shall provide a written explanation and obtain approval from Ecology's Federal Permit Manager before placing the staging area in the setback area.

Is replaced with:

Upland staging areas will be located a minimum of 50 feet and, where practical 200 feet, from waters of the state including wetlands. If a staging area must be located within 50 feet of the waters of the state, then the Applicant shall provide a written explanation and obtain approval from Ecology's Federal Permit Manager before placing the staging area in the setback area.

III. The following conditions are added to Section E. Construction:

10. The temporary floating staging area shall be used for the minimum amount of time needed for wall construction and provide storage of equipment only.
11. Any equipment stored on the floating staging area shall have secondary containment to prevent discharge of oil or hydraulic fluid to waters of the state.
12. No maintenance of equipment shall be performed on the temporary floating staging area but shall be removed to the upland staging area for repair.

IV. The following condition was moved and changed from E.13 to E.8:

No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.

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

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on 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.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
<p>Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503</p>	<p>Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608</p>
<p>Pollution Control Hearings Board 1111 Israel Road SW STE 301 Tumwater, WA 98501</p>	<p>Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903</p>

CONTACT INFORMATION

Please direct all questions about this Order to:

Penny Kelley
Department of Ecology
Headquarters
PO Box 47600
Olympia, WA 98504-7600
360-280-8856
Penny.kelley@ecy.wa.gov

MORE INFORMATION

- Pollution Control Hearings Board Website
<http://www.eluho.wa.gov/Board/PCHB>
- 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>



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

May 27, 2020

NOT AN ORIGINAL!! THIS IS A COPY REFLECTING ALL AMENDMENTS TO DATE.
First Amendment Changes are reflected in red.

IN THE MATTER OF GRANTING A) ORDER # 16624
WATER QUALITY) Construct a 500' linear seawall to replace the
CERTIFICATION TO) existing, deteriorating seawall and protect the
U.S. Army Corps of Engineers) Emma Schmitz Memorial park on Elliot Bay
in accordance with 33 U.S.C. 1341) located in King County, Washington.
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

U.S. Army Corps of Engineers
Seattle District
Attn: Scott Pozarycki
PO Box 3755
Seattle, WA 98124-3755

On May 8, 2019, the Department of Ecology (Ecology) received a Joint Aquatic Resources Permit Application (JARPA) from U.S. Army Corps of Engineers (Corps) requesting a Section 401 Water Quality Certification (WQC) for the Emma Schmitz (Alki) Coastal Erosion Control Project: Section 103 Coastal Storm Damage Reduction. Ecology issued a joint public notice for the project on June 4, 2019.

The Corps is proposing to build a 500' linear seawall to protect utility and transportation infrastructure as well as the Emma Schmitz Memorial Park. The new seawall will be a solid pile wall with concrete lagging and concrete-encased steel beams, located adjacent to the existing wall that is deteriorating. **To prevent damage to the existing sewer pipe located adjacent to the seawall in the upland area, a temporary, floating staging area will be placed waterward within the limits of construction. This area will provide temporary storage of heavy equipment in order to minimize weight placed on the pipe and avoid cracking it.** The height of the new wall will be 22' feet above mean lower low water (MLLW). To protect the new wall from scour, a buried toe consisting of 1 foot layer filter rock and three feet of armor rock will be placed below the existing grade and buried with a 1-12" gravel/cobble beach fill. The existing seawall will be buried with backfill material to provide a stable slope leading up to the existing sidewalk grade. To offset the loss of beach habitat from the new structure, a portion of riprap placed during an emergency repair will be removed.

The project is located in West Seattle at 4503 Beach Dr SW on Puget Sound in King County, Washington.
Section 15 T24N R03E
WRIA 9 Duwasmish - Green

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 Corps 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 Corps and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent to HQ Office, Attn: Federal Permit Manager, PO Box 47600, Olympia, WA 98504-7600 or via e-mail to fednotification@ecy.wa.gov and cc to penny.kelley@ecy.wa.gov. The submittals shall be identified with Order No. 16624 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 JARPA received by Ecology on May 8, 2019.
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. 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, and/or necessary data collection, 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 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.
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. 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 penny.kelley@ecy.wa.gov. Notifications shall be identified with Order No. 16624 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.
 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.

C. Timing

1. This Order will expire five (5) years from the date of issuance. Continuing this Order beyond the five-year term of this Order will require the Applicant to apply for an extension prior to the expiration of this Order.
2. In water work below the ordinary high water line must occur between July 15th through February 15th of any year.

D. Water Quality Monitoring & Criteria

1. Puget Sound is categorized as extraordinary and the criteria of the categorization apply as described in WAC 173-201A-210 (1), except as specifically modified by this Order.
2. The Applicant shall conduct visual water quality monitoring when working below the OHWM.
3. Visible turbidity anywhere beyond the temporary area of mixing (point of compliance) from the activity shall be considered an exceedance of the standard.
4. Visual monitoring results shall be submitted weekly to the Ecology Federal Permit Manager per condition A.2.
5. Mitigation and/or additional monitoring may be required if the monitoring results indicate that the water quality standards have not been met.

E. Construction

General Conditions

1. All clearing limits, stockpiles, staging areas, and trees to be preserved shall clearly be marked prior to commencing construction activities and maintained until all work is completed for each project.
2. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
3. All construction 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.
4. Turbid de-watering water associated with in-water work shall not be discharged directly to waters of the state, including wetlands. Turbid de-watering water shall be routed to an upland area for on-site or off-site settling.
5. Clean de-watering water associated with in-water work that has been tested and confirmed to meet water quality standards may be discharged directly to waters of the state including wetlands. The discharge outfall method shall be designed and operated so as not to cause erosion or scour in the stream channel, banks, or vegetation.
6. All equipment being used below the ordinary high water mark shall utilize bio-degradable hydraulic fluid.
- ~~7. Staging areas will be located a minimum of 50 feet and, where practical, 200 feet, from waters of the state including wetlands. If a staging area must be located within 50 feet of waters of the state, then the Applicant shall provide a written explanation and obtain approval from Ecology's Federal Permit Manager before placing the staging area in the setback area.~~
7. Upland staging areas will be located a minimum of 50 feet and, where practical, 200 feet, from waters of the state including wetlands. If a staging area must be located within 50 feet of the waters of the state, then the Applicant shall provide a written explanation and obtain approval from Ecology's Federal Permit Manager before placing the staging area in the setback area.
8. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.
9. The temporary floating staging area shall be used for the minimum amount of time needed for wall construction and provide storage of equipment only.

10. Any equipment stored on the floating staging area shall have secondary containment to prevent discharge of oil or hydraulic fluid to waters of the state.
11. No maintenance of equipment shall be performed on the temporary floating staging area but shall be removed to the upland staging area for repair.
12. Equipment used for this project shall be free of external petroleum-based products while used around the waters of the state, including wetlands. Accumulation of soils or debris shall be removed from the drive mechanisms (wheels, tires, tracks, etc.) and the undercarriage of equipment prior to its use around waters of the state, including wetlands.
- ~~13. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.~~
14. 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.
15. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall not be discharged into state waters. The Applicant shall set up a designated area for washing down equipment.

Seawall Construction

16. All forms for concrete shall be completely sealed to prevent the possibility of fresh concrete entering waters of the state.
17. All concrete shall be completely cured prior to coming into contact with water.
18. Concrete process water shall not enter waters of the state. Any concrete process/contact water discharged from a confined area with curing concrete shall be routed to upland areas to be treated and disposed of appropriately with no possible entry to state waters.
19. All excavated sediment not incorporated into the buried toe shall be disposed upland in an approved disposal site.

F. Emergency/Contingency Measures

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

3. 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.
4. 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.
5. 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.
6. 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.