



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

*Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000
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September 10, 2020

Seattle Parks and Recreation
ATTN: David Graves
300 Elliott Avenue W, Suite 100
Seattle, WA 98119

RE: Water Quality Certification Order No. 18242 for Corps Public Notice No. NWS-2019-703-WRD, Waterfront Park and Pier 63 Reconstruction, Seattle, King County, Washington

Dear David Graves:

On February 14, 2020, Seattle Parks and Recreation submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Waterfront Park and Pier 63 Reconstruction project, Seattle, King County, Washington.

On behalf of the state of Washington, the Department of Ecology certifies that the work described in the Joint Aquatic Resource Permit Application (JARPA) and the public notice complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

Please ensure that anyone doing work under this Order has read, is familiar with, and is able to follow all of the provisions within the attached Order.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Burcar", is written over a horizontal line.

Joe Burcar, Section Manager
Shorelands and Environmental Assistance Program

Sent by electronic mail: David.Graves@seattle.gov

Enclosure

e-cc: Dan Krenz, US Army Corps of Engineers
Jill Macik, Seattle Department of Transportation
Laura Arber, WA Dept of Fish and Wildlife
Sherri Gallant, WA Dept of Natural Resources
Glen St. Amant, Muckleshoot Indian Tribe
Alison O'Sullivan, Suquamish Tribe
Kerry Lyste, Stillaguamish Tribe
Shane Guan, NMFS
Jim Muck, USFWS
Ben Perkowski, Seattle Dept. of Const. & Inspections
Maria Sandercock, Ecology
Amy Jankowiak, Ecology
Grant Yang Ecology
Loree' Randall, Ecology
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A) ORDER #18242
WATER QUALITY) Corps Reference No. NWS-2019-703-WRD
CERTIFICATION TO) Waterfront Park and Pier 63 Reconstruction,
Seattle Parks and Recreation) Elliott Bay, located in Seattle, King County,
in accordance with 33 U.S.C. 1341) Washington.
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

Seattle Parks and Recreation
ATTN: David Graves
300 Elliott Avenue W, Suite 100
Seattle, WA 98119

On February 14, 2020, the Department of Ecology (Ecology) received a request from Seattle Parks and Recreation for a Section 401 Water Quality Certification (WQC) for Waterfront Park and Pier 63 Reconstruction project. The U.S. Army Corps of Engineers (Corps) issued a joint public notice for the project on March 16, 2020.

The proposed project entails removal and reconstruction of two piers (Waterfront Park and Pier 63), and enhancement of previously installed habitat features at the Seattle waterfront. The project sites are located in Section 31, Township 25 N., Range 4 E., within Water Resource Inventory Area (WRIA) 9:

1. Waterfront Park (Pier 58): 1401 Alaskan Way, in Seattle, King County; and
2. Pier 63: 1951 Alaskan Way, in Seattle, King County.

AUTHORITIES

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed the WQC request 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; and,
4. Conformance with Washington's prohibition on discharges that cause or tend to cause pollution of waters of the state of Washington. RCW 90.48.080.

WATER QUALITY CERTIFICATION CONDITIONS

With this WQC and 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, this WQC is granted to Seattle Parks and Recreation (Applicant) subject to the conditions within this Order.

Issuance of the WQC for this proposal does not authorize Seattle Parks and Recreation 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 WQC absolves the 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 Seattle Parks and Recreation and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent to Northwest Regional Office, Shorelands and Environmental Assistance Program, Attn: Federal Permit Manager, 3190 160th Avenue SE, Bellevue, WA 98008, or via e-mail to fednotification@ecy.wa.gov and cc: to Rebekah.Padgett@ecy.wa.gov. The submittals shall be identified with Order #18242 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 following documents:
 - a. Joint Aquatic Resource Permit Application (JARPA) received by Ecology on February 14, 2020;
 - b. Memorandum from Jill Macik, Seattle Department of Transportation, and Merri Martz, Anchor QEA, to Laura Arber, Washington Department of Fish and Wildlife, and multiple agencies, RE: Waterfront Park and Pier 63 Reconstruction Project Supplemental Information, dated August 14, 2020;
 - c. Notice of Need for Emergency Work, Pier 58, dated August 21, 2020;
 - d. Waterfront Seattle Pier 58 Improvements Demolition Site Plan Set, received by Ecology on August 21, 2020; and,
 - e. E-mail from Jill Macik, Seattle Department of Transportation, to Rebekah Padgett, Ecology, RE: Waterfront Park/Pier 63 Project Questions, dated September 10, 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 U.S. Army Corps of Engineers (Corps) issues a permit for this project.
7. The Applicant shall send (per condition A.2 above) 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 ensure that all project engineers, contractors, and other workers at the project site with authority to direct work 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 signatory that s/he has read and understands the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins.

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 Rebekah.Padgett@ecy.wa.gov. Notifications shall be identified with Order No. 18242 and include the Applicant name, project name, project location, project contact and the contact phone number.
 - a. Immediately following a violation of state water quality standards or when the project is out of compliance with any conditions of this Order.
 - 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.
2. In addition to the phone or e-mail notification above, 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.
3. 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 are completed.

C. Timing

1. This Order will expire December 31, 2029, unless otherwise approved by Ecology.

In-Water Work Window Timing

2. In-water work shall be conducted between the following dates, unless otherwise approved by Ecology:
 - a. September 1 and January 15 of any year at Pier 63, and
 - b. September 1 and February 15 of any year at Pier 58.
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 before the change is implemented. Proposed changes shall be implemented only with written approval from Ecology.

D. Project Mitigation Conditions:

1. The Applicant shall implement the Compensatory Mitigation Plan, prepared by Anchor QEA, LLC, dated August 14, 2020 [hereafter referred to as "Mitigation Plan"], 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 (see A2) for review and approval prior to implementing the change.
3. 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 habitat enhancement features.
4. The Applicants shall submit monitoring reports, by December 31 of each year, to Ecology (see A2) documenting mitigation site conditions for years 1, 3, and 5 following construction. The reports shall include monitoring results for the macroalgae and invertebrate colonization on the marine mattresses and at Habitat Area A, as well as cross-section surveys at the habitat mattresses for physical changes (e.g., settlement). The reports shall include a discussion on whether the Mitigation Plan's goals, objectives, or performance standards are being met.
5. If the Applicant has not met all conditions, including performance standards for the mitigation site at the end of the monitoring period, Ecology may require additional monitoring, additional mitigation, or both.

E. Water Quality Monitoring & Criteria

1. This Order does not authorize the Applicant to exceed applicable turbidity or pH standards beyond the limits established in WAC 173-201A-210(1)(e)(i).
2. The Applicant shall conduct water quality monitoring for the Waterfront Park emergency action as described in the *Draft Waterfront Park Emergency Demolition Project Water Quality Monitoring Plan*, prepared by Anchor QEA, dated September 2020.
3. The Applicant shall revise the *Waterfront Park Emergency Demolition Project Water Quality Monitoring Plan*, prepared by Anchor QEA, dated September 2020, to address all outstanding elements of the project after the Waterfront Park emergency demolition is completed, and to be consistent with the conditions of this Order. A final Plan shall be submitted to Ecology's Federal Permit Manager (per Condition A.2 of this Order) **for review and approval** at least 30 days prior to beginning any work after the emergency action and covered by this Order.
4. The Applicant must provide, in writing, any changes or additions to the WQMP 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 Ecology's 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.

F. Construction

General Conditions

1. All work in and near waters of the state shall be conducted to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control Best Management Practices (BMPs) suitable to prevent exceedances of state water quality standards shall be in place before starting maintenance and shall be maintained throughout the duration of the activity.

2. No stockpiling or staging of materials shall occur at or below the Ordinary High Water Mark (OHWM) of any waterbody.
3. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
4. 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.
5. All equipment being used below the OHWM shall utilize biodegradable hydraulic fluid.

Equipment & Maintenance

6. 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 50-foot setback area.
7. Equipment used for this project shall be free of external petroleum-based products while used around the waters of the state. 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.
8. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.
9. 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.
10. Wash water containing oils, grease, or other hazardous materials resulting from washing of equipment or working areas shall not be discharged into state waters. The Applicant shall set up a designated area for washing down equipment.
11. Turbidity curtains shall be properly deployed and maintained in order to minimize turbidity and re-suspension.
12. Barges shall not be allowed to ground-out during in-water construction.
13. Barges shall be swept, as necessary, and kept free of material that could be blown into water.

14. No return water is allowed to discharge from the barge(s) into waters of the state.

Removal of Piles

15. Piles removed from the substrate shall be moved immediately from the water onto a barge or onto upland.
16. The pile shall not be shaken, hosed off, left hanging to drip or any other action intended to clean or remove adhering material from the pile.
17. During pile removal, containment booms and absorbent sausage booms shall be placed around the perimeter of the in-water work area and upland storage area, if used, to capture wood debris, oil, and other materials from being released into marine waters.
18. All excavated piles and debris that is collected shall be disposed upland in an approved disposal site.
19. If a barge is used to remove piles, the work surface on the barge deck shall include containment for piles and any liquid or sediment removed during pulling of the piling.
20. Sediments spilled on work surfaces shall be contained and disposed of with the pile debris at an approved upland disposal site.
21. Water left in the containment on the barge shall not be discharged into waters of the state.

Substrate Enhancement and Habitat Mattress Placement

22. When placing material (e.g., gravel and shell mix), the bucket or other means of delivery shall be set as close as possible to the substrate surface, and placement shall be conducted slowly in order to minimize turbidity.
23. The Applicant shall place any gravel and shell mix carefully in order to minimize turbidity. No end dumping of material is allowed.

G. 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 available on site to respond to any 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 and 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 Ecology's 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 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.

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

CONTACT INFORMATION

Please direct all questions about this Order to:

Rebekah Padgett
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008

(425) 649-7129
Rebekah.Padgett@ecy.wa.gov

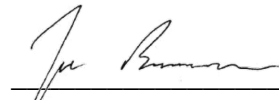
MORE INFORMATION

- **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>
- **Chapter 90.48 RCW – Water Pollution Control**
<http://app.leg.wa.gov/RCW/default.aspx?cite=90.48>

- **Chapter 173.204 WAC – Sediment Management Standards**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-204>
- **Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-200>
- **Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>

SIGNATURE

Dated this 10th day of September, 2020, at the Department of Ecology, Bellevue, Washington.



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

Attachment A

**Statement of Understanding
Water Quality Certification Conditions**

Waterfront Park and Pier 63 Reconstruction Project

Water Quality Certification Order No. 18242

and

Corps Reference No. NWS-2019-703-WRD

As the Applicant for the Waterfront Park and Pier 63 Reconstruction project, I have read and understand the conditions of Washington State Department of Ecology Order #18242, and any permits, plans, documents, and approvals referenced in the Order. I have and will continue to ensure that 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.

Signature _____ Date _____

Title _____ Phone _____

Company _____