



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

April 25, 2014

U.S. Oil and Refining Co.
ATTN: Mr. Jon Shields
3001 Marshall Avenue
Tacoma, WA 98421

RE: Water Quality Certification Order No. **10653** for Corps Public Notice No. **NWS-2012-1352**, Crude Oil Railcar Unloading Facility, Pierce County, Washington

Dear Mr. Shields:

On April 3, 2013, U.S. Oil and Refining Company submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the Crude Oil Railcar Unloading Facility, in Tacoma, Pierce County, Washington. A revised JARPA was submitted to Ecology on June 25, 2013.

The proposed project will construct a new railway facility that will require a new rail crossing over the Lincoln Avenue Ditch. The crossing will involve placement of a box culvert and filling 0.16 acre of a wetland ditch to construct the two railway segments over the Lincoln Avenue ditch.

On behalf of the State of Washington, Ecology certifies that the work described in the 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.

If you have any questions, please contact Lori Ochoa at (360) 407-6926. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Perry J Lund, Unit Manager
Shorelands and Environmental Assistance Program
Southwest Regional Office

Enclosure

By Certified Mail 7012 2920 0000 1182 4766



cc: Olivia Romano, Corps of Engineers
Leonard Machut, WDFW
Shirley Schultz, City of Tacoma
Cassandra Moore, Grette Associates

e-cc: ECY RE FEDPERMITS
Loree Randall – Ecology HQ, SEA
Deb Cornett – Ecology SWRO, WQ
Lori Ochoa – Ecology SWRO, SEA
Alex Callender – Ecology SWRO, SEA

IN THE MATTER OF GRANTING A) ORDER No. 10653
WATER QUALITY) Corps Reference No. NWS-2012-1352
CERTIFICATION TO) Crude Oil Railcar Unloading Facility,
U.S. Oil and Refining Company) Tacoma, Pierce 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: U.S. Oil and Refining Company
ATTN: Mr. Jon Shields
3001 Marshall Avenue
Tacoma. WA 98421

On April 3, 2013, U.S. Oil and Refining Company submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A revised JARPA was submitted to Ecology on June 25, 2013. A joint public notice regarding the request was distributed by the Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on April 30, 2013.

The Applicant is proposing to construct a new railway facility that will require a new railway crossing over the Lincoln Avenue Ditch to provide a connection to the existing railway immediately northwest of Lincoln Avenue. The purpose of the project is to provide a rail connection between the unloading facility and the existing railway to transport petroleum to the existing unloading facility and then transfer it to existing holding structures.

The project will involve: clearing approximately 220 linear feet of vegetation, earthwork to place a box culvert at the flow line, backfill with structural fill, and grading to support the new railway connection. Approximately 230 feet of open ditch stormwater conveyance is proposed to be converted to closed pipe conveyance.

This project is located at 3001 Marshall Avenue in the city of Tacoma, Pierce County, Washington; SE and SW Quarter of Sections 34 and 35, Township 21 North, Range 3 East; WRIA 10, Puyallup-White Watershed.

To offset project impacts, the Applicant will remove approximately 8,000 square feet of overwater coverage and 2,276 cubic yards of in-water structure from a portion of Commencement Bay. The structure to be removed is a portion of a derelict wharf at 611 N. Schuster Parkway that is composed of creosote-treated timber, cement piles and footings, and timber decking surfaced with asphalt. The removal of the overwater coverage and in-water structure will restore this portion of near-shore habitat.

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; 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 meet the 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:

1. For purposes of this Order, the term "Applicant" shall mean the U.S. Oil and Refining Company and its agents, assignees and contractors.
2. All submittals required by this Order shall be sent to Ecology's Southwest Regional Office, Attn: Federal Permit Manager, P.O. Box 47775 Olympia, WA 98504-7775 or via e-mail (preferred) to loch461@ecy.wa.gov. Any submittals shall reference **Order No. 10653** and Corps Reference No. **NWS-2012-1352**.
3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resource Permit Application (JARPA) submittal package received by Ecology on April 3, 2013, and as revised on June 25, 2013; and in the March 28, 2014 e-mail with the subject line: *U.S. Oil & Refining Company Crude Oil Railcar Unloading Facility Response to 401 Water Quality Certification (WQC) Project Review Questions and Comments*. The Applicant will be out of compliance with this Order and must submit an updated JARPA if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
4. 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.
5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual 404 and/or Section 10 permit for the project.

6. 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.
7. The Applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or 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. Furthermore, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified or if additional conditions are necessary to further protect water quality.
9. The Applicant shall ensure that all appropriate project engineers and contractors at the project site 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 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.
10. 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.
11. 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. Water Quality Conditions:

1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-200(1)(e)(i) for the work proposed within the Lincoln Avenue Ditch (project site) and WAC 173-210(1)(e)(i) for the work proposed within Commencement Bay (mitigation site).
2. Water Quality Monitoring: The Applicant shall revise the *U.S. Oil & Refining Company Crude Oil Railcar Unloading Facility Water Quality Monitoring Plan – Mitigation Site* prepared by Grette Associates, LLC, dated March 2014, to include both the project site and the mitigation site in accordance with the conditions of this Order. **A final WQMPP shall be submitted to the Federal Project Manager for review and approval at least 30 days prior to beginning any work covered by this plan. Work shall not begin until Ecology approves the WQMPP.**
 - a. Parameters to be monitored: Turbidity shall be monitored for this project.
 - b. Monitoring Method: During and immediately after project/mitigation construction, the Applicant or the contractor shall monitor for turbidity discharges at the point of compliance. A turbidimeter is recommended; however visual gauging and photo documentation of turbidity is acceptable.

- c. Monitoring Frequency: Water quality monitoring for turbidity shall be continuous during in-and-over water activities at both the project and mitigation sites.
 - d. Water Quality Standards for Turbidity Are as Follows:
 - i. For work within the Lincoln Avenue Ditch (project site), turbidity shall not exceed 5 NTU over background when the background is 50 NTU or less; or a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. The point of compliance shall be as specified in WAC173-201A (200)(1)(e)(i).
 - ii. For work within Commencement Bay (mitigation site), turbidity shall not exceed 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or more than a twenty (20) percent increase in turbidity when the background turbidity is more than 50 NTU, at the point of compliance when a turbidimeter is used. The point of compliance shall be at a radius of 150 feet from the activity causing the turbidity.
 - e. Detection of exceedances: If water quality exceedances are observed outside of 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, correct the problem and prevent further turbidity exceedances. If an exceedance should occur, the Applicant or the contractor shall follow the protocols and notification procedures outlined below.
 - f. Notification of exceedances: 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 No. 10653, Attn: Federal Permit Manager, by telephone at (360) 407-6926, or by e-mail at loch461@ecy.wa.gov. The Applicant shall, at a minimum, provide Ecology with the following information:
 - i. A description of the nature, extent, and cause of the exceedance.
 - ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the project 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, water quality monitoring results and location, photographs, and any other pertinent information.
 - iv. After such an event, the Applicant shall assess the efficacy of the site BMPs and update or improve the BMPs used at the work site in an effort to prevent a recurrence of the exceedance.
3. Ecology must approve, in writing, any changes to the final WQMPP.
 4. Additional mitigation and/or monitoring may be required if water quality standards are not met.

C. Timing Requirements:

1. All in-water work shall be subject to the timing limitations imposed by the most current Hydraulic Project Approval (HPA) issued by the Washington Department of Fish and Wildlife (WDFW) for this project.
2. This Order shall remain in effect for a period of five (5) years from date of issuance. Continuing this project beyond the five (5) year term of this Order will require separate certifications every five (5) years.

D. Notification Requirements:

1. Written notification (e-mail is preferred) shall be made to Ecology's Southwest Regional Office Federal Permit Manager in accordance with Condition A.2, for the following activities:
 - a. At least ten (10) days prior to the onset of in-water work in each construction season.
 - b. Within ten (10) days after completion of construction for each project season.
 - c. Immediately following a violation of the state water quality standards or any condition of this Order.
2. If project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit a written construction status report. Status reports shall be submitted every 12 months thereafter until project construction is complete.

NOTE: These notifications shall include the Applicant's name, the Project name, Order No. **10653**, Corps Reference No. **NWS-2012-1462**, the project location, contact name, and contact's phone number.

E. Project Specific Conditions:

General Construction

1. The Applicant shall comply with the conditions of the current Construction Stormwater General Permit (National Pollutant Discharge Elimination System - NPDES) issued for this project.
2. All work in and near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control Best Management Practices (BMP's) suitable to prevent exceedances of state water quality standards shall be in place at before starting clearing, filling, and grading work and shall be maintained throughout construction.
3. The Applicant must use an Ecology approved Stormwater Manual for implementation, maintenance, and operation of BMPs.
4. Within the project limits, all environmentally sensitive areas that are to be protected from disturbance shall be fenced with high visibility construction fence (HVF) prior to commencing construction activities. All project staff shall be trained to recognize construction fencing or flagging that identifies sensitive area boundaries.

5. The project shall be clearly marked/staked prior to commencing project activities on site. Clearing limits, travel corridors, stockpile sites, and staging areas shall be clearly marked and maintained until all work is completed. Equipment shall enter and operate within the marked clearing limits, corridors, and stockpile areas.
6. Staging areas will be located a minimum of 50 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 (with additional BMPs) and obtain approval from Ecology's Federal Permit Manager before placing the staging area within the setback area.
7. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands a minimum of 50 feet, and where practical, 100 feet, from waters of the state including wetlands, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
8. No petroleum products, fresh concrete, lime, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
9. All equipment that will operate over or within waters of the state shall be free of external petroleum-based products. Accumulation of soils or debris shall be removed from the drive mechanisms and the undercarriage of equipment prior to use. Equipment shall be inspected daily for leaks, accumulation of grease, etc. Any identified problems shall be fixed before operating over or within waters of the state.
10. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working area shall not be discharged into state waters. The Applicant shall establish a separate, contained area for washing down vehicles and equipment that does not have any possibility of draining to surface waters and/or wetlands.
11. All construction debris, excess sediment, and other solid waste material shall not be stockpiled below the Ordinary High Water Mark (OHWM) and shall be properly managed and disposed of in an upland disposal site approved by the appropriate regulatory authority.
12. Appropriate BMPs shall be implemented to minimize track-out during construction.
13. Clean Fill Criteria: The Applicant shall ensure that fill (soil) placed for the proposed project does not contain toxic materials in toxic amounts.

Potentially Contaminated Soils

14. If contaminated soils are encountered during construction, the Applicant shall notify Ecology (per Condition A.2., above) within 24 hours. Protective measures to isolate or remove contaminated soils shall be implemented. Contaminated soils generated during site construction shall be managed and disposed of in accordance with state and local regulations.
15. Sampling of potentially contaminated media may be required.

Temporary Diversion Structure and Dewatering

16. The temporary cofferdam to divert water around the work area shall be in place prior to initiation of other work in the wetted perimeter of that area.
17. The temporary diversion shall be of sufficient size, constructed of non-erosive materials, and installed to divert the entire flow through the bypass or around the isolated work area for the duration of the project.
18. The diversion system shall be designed and operated so as not to cause erosion in the channel or on the bank of the waterbody in which the work is being conducted.
19. Prior to returning water flow to the work area, all bank protection measures shall be in place.
20. Re-introduction of water into the isolated work area shall be done gradually, and at a rate not higher than the normal flow, in order to minimize the mobilization of sediments and fines.
21. Upon completion of the project, all material used for the temporary diversion shall be removed from the site.
22. Turbid dewatering water (including turbid water generated from cleaning and maintenance activities) shall not be discharged directly into waters of the state. Turbid water shall be pumped to an upland area to allow the turbid water to settle. The discharge from the upland areas shall meet water quality criteria at the point of discharge into surface waters and/or wetlands.
23. Dewatering water that is not turbid may be discharged directly to surface waters and/or wetland provided that: a) waste water containing raw concrete or other harmful material has not been in contact with the water to be discharged, and b) the water will meet **all of the water quality standards at the point of discharge.**

Concrete Work

It is anticipated that the project will use pre-cast concrete; but if pour-in-place concrete is used during project construction, the following four conditions shall apply:

24. Spill protection measures shall be in place prior to any concrete delivery over water.
25. All concrete shall be poured in the dry, or within confined waters not being dewatered and shall be completely cured prior to coming into contact with waters of the state.
26. Uncured concrete and concrete by-products shall be completely sealed off and totally contained using sealed forms or other leak-proof containment system.
27. Concrete process water shall not enter waters of the state. Any concrete process/contact water discharged from a confined area shall be routed to a contained area to be treated and disposed of appropriately with no possible entry to waters of the state.

Demolition and Piling Removal

28. The Applicant shall contain and appropriately dispose of all debris generated from demolition and removal of structures at the mitigation site so there is no possible entry to waters of the state. Containment may include: work floats or tarps, absorbent booms

placed around the perimeter of the work area, or other method of containment approved by Ecology.

29. Piles and other materials embedded in the shoreline will be removed using a vibratory extractor and/or clamshell bucket.
30. All pilings and other materials removed from the substrate shall be removed immediately from the water into a barge or onto uplands. The pile shall not be shaken, hosed-off, or left hanging to drip or any other action intended to clean or remove adhering material from the pile.
31. The work surface of the barge deck or the upland area shall include a containment basin for the piles and any sediment removed during extraction of the piling. Basins may be constructed of durable plastic sheeting with sidewalls supported by hay bales or support structure to contain all sediment.
32. The extracted piles and all construction debris, excess sediment, and other solid waste material shall be properly managed and disposed of in an approved upland disposal site so that it cannot cause water quality degradation to state waters.
33. Pilings that break during extraction will be cut three (3) feet below the mudline and capped with clean sand.
34. During construction, the Applicant shall have a boat available on site at all times to retrieve any debris that enters the water.
35. If a barge is to be used, it shall be operated in deep water so as to minimize the near shore propeller wash impacts such as suspension of near shore sediments.

F. Emergency/Contingency Measures:

1. The Applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials and an emergency call list available on site.
2. 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 situations occur, the Applicant or operator shall immediately take the following actions:
 - a. Cease operations that are causing the compliance problem.
 - 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 finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
 - d. 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.
- e. Immediately notify Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events Ecology's 401/CZM Federal permit coordinator at (360) 407-6076.
 - f. Submit a detailed written report to Ecology (per conditions A.2. above) 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. 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, including wetlands.
 4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology using the above phone numbers.

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 all 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 RD SW STE 301 Tumwater, WA 98501</p>	<p>Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903</p>

CONTACT INFORMATION

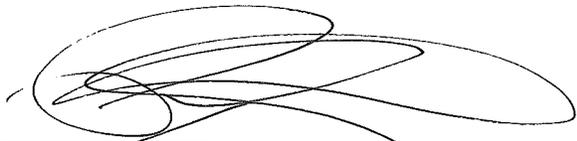
Please direct all questions about this Order to:

Lori Ochoa, Federal Permit Manager
Department of Ecology
Southwest Regional Office
P.O. Box 47775
Lacey, WA 98504-7775
Loch461@ecy.wa.gov

MORE INFORMATION

- **Pollution Control Hearings Board Website**
www.eho.wa.gov/Boards_PCHB.aspx
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**
<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**
<http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Chapter 90.48 RCW – Water Pollution Control**
<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>
- **Chapter 173.204 Washington Administrative Code (WAC) Sediment Management Standards**
<http://www.ecy.wa.gov/biblio/wac173204.html>
- **Chapter 173-200 WAC Water Quality Standards for Ground Waters of the State of Washington**
<http://www.ecy.wa.gov/biblio/wac173200.html>
- **Chapter 173-201A WAC Water Quality Standards for Surface Waters of the State of Washington**
<http://www.ecy.wa.gov/biblio/wac173201A.html>

SIGNATURE



Perry J. Lund, Unit Manager
Shorelands and Environmental Assistance Program
Southwest Regional Office
Department of Ecology

Date

4/25/2014

Attachment A
Statement of Understanding
Water Quality Certification Conditions

Crude Oil Railcar Unloading Facility
U.S. Oil and Refining Company
Water Quality Certification Order No. **10653**
and
Corps Reference No. **NWS-2012-1352**

I, _____, state that I will be involved as an agent or contractor for U.S. Oil and Refining Company in the site preparation and/or construction of the Crude Oil Railcar Unloading Facility located at 3001 Marshall Avenue, Tacoma, Pierce County, Washington. I further state that I have read and understand the relevant conditions of Washington Department of Ecology Water Quality Certification Order No. 10653 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

Phone

Company

