



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

June 9, 2021

J.J. Brenner Oyster Company  
Bruce Harlan Brenner  
402 S 333rd St, Suite 106  
Federal Way, WA 98003

RE: Water Quality Certification Order No. **20105** for Corps Reference No. **200900656**,  
J.J. Brenner Oyster Company Shellfish Aquaculture: Eld Inlet South,  
Thurston County, Washington

Dear Bruce Harlan Brenner:

On May 10, 2021, J.J. Brenner Oyster Company submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for J.J. Brenner Oyster Company Shellfish Aquaculture: Eld Inlet South located on tidelands within Eld Inlet, near Olympia, Thurston 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 about this decision, please contact Teresa Pucylowski by e-mail at [teressa.pucylowski@ecy.wa.gov](mailto:teressa.pucylowski@ecy.wa.gov). The enclosed Order may be appealed by following the procedures described within the Order.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brenden", is written over a horizontal line.

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

J.J. Brenner Oyster Company Shellfish Aquaculture: Eld Inlet South  
Order No. 20105, Corps No. 200900656  
June 9, 2021  
Page 2 of 2

Enclosure

e-cc: Brielle Cummings, Corps of Engineers (Corps)  
Amy Groesbeck, Confluence Environment Company  
Laura Hendricks, Coalition to Protect Puget Sound Habitat  
Amy van Saun, Center for Food Safety  
Loree' Randall, Ecology  
Teresa Pucylowski, Ecology  
ecyrefedpermits@ecy.wa.gov – Aquatics No. 139887  
Aquaculture-Reinforcement-Team@usace.army.mil

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER No. 20105</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference No. 200900656</b>
<b>CERTIFICATION TO</b>	)	J.J. Brenner Oyster Company Shellfish
J.J. Brenner Oyster Company	)	Aquaculture: Eld Inlet South located on tidelands
pursuant to 33 U.S.C. 1341 (FWPCA	)	within Eld Inlet, near Thurston County,
§ 401), RCW 90.48.120, RCW 90.48.260	)	Washington
and Chapter 173-201A WAC	)	

J.J. Brenner Oyster Company  
 Attn: Bruce Harlan Brenner  
 402 S 333rd St, Suite 106  
 Federal Way, WA 98003

On May 10, 2021, J.J. Brenner Oyster Company submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for J.J. Brenner Oyster Company Shellfish Aquaculture: Eld Inlet South, Thurston County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on May 13, 2021.

This project will continue to commercially cultivate Pacific and Olympic oysters, and geoduck clams on a total of 2.45 acres. The project area occurs on private tidelands between +1' and Extreme Low Water (-3') Mean Lower Low Water line, with a total of 1 acre of cultivation. The farm site has a total of 1 acre of cultivation: 0.5 acres of on-bottom culture of Pacific and Olympia oysters, 0.1 acres of rack-and-bag culture of Pacific oysters, and replacement of 0.4 acres of previous clam/oyster acreage with geoduck. Additionally, secondary crops from natural set of Manila clams, butter clams, cockles, littleneck clams, mussels, etc. occur across cultivated area of the Project area. The tidelands have a mix of mud, sand, and gravel, with occasional floating patches of seaweed (e.g., *Ulva* spp). The company has been farming these tidelands for over 100 years and there has never been any eelgrass on the parcel. All farm areas are accessed by boat.

Most oysters are grown directly on the beach substrate, seasonally covered in predator exclusion netting. Prior to planting, shellfish beds may be prepared by removing debris by hand. Seeding occurs either by hand or by using oyster cultch – setting out and securing bags of washed, aged oyster shell to collect natural set on-site. After seeding, predator exclusion nets may be used to cover the oyster bed, with edges anchored using rebar or buried in the substrate. Netting is monitored and removed seasonally. Oysters are also grown using racks and bags. PVC or metal stakes may be installed vertically on the bed to secure the bags. Racks may also be used to elevate bags above the beach. Seed is placed in reusable plastic net bags secured to the stakes or racks. All oysters are harvested by hand, including hand picking and raking.

Manila clams are not seeded, but natural spawning and setting occurs at some locations on the farm. Natural sets of clams are harvested manually, including via hand-picking and raking.

Geoduck seed is placed within PVC tubes which are pushed into the substrate in the lower intertidal and covered with predator exclusion mesh. Predator exclusion nets are sometimes

placed over the tubes and tube mesh for containment and larger predator exclusion. The individual nets are usually removed in 12-18 months. The tubes are generally removed in 24-30 months. Harvest of geoduck occurs using water jets on the beach at low tide.

The project site is located on tidelands within Eld Inlet, on parcel number 93037400000, near Olympia, Thurston County, Washington; Section 1, Township 18 North, Range 3 West; WRIA 13, Deschutes Watershed.

With this Order, Ecology is granting J.J. Brenner Oyster Company's request for a Section 401 Water Quality Certification for the J.J. Brenner Oyster Company Shellfish Aquaculture: Eld Inlet South project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on May 10, 2021.

Based on the information submitted, Ecology has determined that the discharge from the project will comply with state water quality requirements. Prior to undertaking any changes that materially alter the project, J.J. Brenner Oyster Company must contact Ecology to determine whether a new Section 401 Water Quality Certification is required.

Issuance of this Section 401 Water Quality Certification for this proposal does not authorize J.J. Brenner Oyster Company 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 Section 401 Water Quality Certification absolves the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

**Special Condition:**

Any work that causes distressed or dying fish or discharges of oil, fuel, or other chemicals into state waters or onto land with a potential for entry into state waters is prohibited<sup>1</sup>. If such work, conditions, or discharges occur, immediately notify<sup>2</sup> Ecology's Regional Spill Response Office at 360-407-6300 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. You will also need to notify the Washington Emergency Management Division<sup>3</sup> at 1-800-258-5990, for actual spills to water only. This condition is necessary to prevent oil and hazardous materials spills from causing environmental damage and to ensure compliance with water quality requirements. The sooner a spill is reported, the quicker it can be addressed, resulting in less harm.

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 the J.J.

---

<sup>1</sup> RCW 90.48

<sup>2</sup> WAC 173-303-145

<sup>3</sup> RCW 90.56.280

Brenner Oyster Company, J.J. Brenner Oyster Company Shellfish Aquaculture: Eld Inlet South project.

This Certification is not effective until the U.S. Corps of Engineers (Corps) Seattle District issues an individual Department of the Army (DA) permit for this project. Order No. **20105** will remain valid for the duration of the associated DA permit. J.J. Brenner Oyster Company should send a copy of the final DA permit to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) within two weeks of receiving it.

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

### CONTACT INFORMATION


Please direct all questions about this Order to:

Teressa Pucylowski  
Department of Ecology  
PO Box 47600  
Olympia, WA 98504-7600  
teressa.pucylowski@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



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

June 9, 2021  
Date