



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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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. **20104** for Corps Reference No. **202001233**,
J.J. Brenner Oyster Company Shellfish Aquaculture: Eld Inlet North,
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 North 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. 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. 20104, Corps No. 202001233
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Enclosure

e-cc: Brielle Cummings, Corps of Engineers (Corps)
Amy Groesbeck, Confluence Environmental 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. 140385
Aquaculture-Reinforcement-Team@usace.army.mil

IN THE MATTER OF GRANTING A)	ORDER No. 20104
WATER QUALITY)	Corps Reference No. 202001233
CERTIFICATION TO)	J.J. Brenner Oyster Company Shellfish
J.J. Brenner Oyster Company)	Aquaculture: Eld Inlet North located on tidelands
pursuant to 33 U.S.C. 1341 (FWPCA)	within Eld Inlet, near Olympia, 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 North, 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 Manila clams, Pacific oysters, and geoduck clams on a total of 10.24 acres. The project area includes the shellfish growing areas within parcel 93035300000, between +3' and Extreme Low Water (-2') Mean Lower Low Water line, and growing areas within parcel 93035400000, between +2' and Extreme Low Water (-3') Mean Lower Low Water line. 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.

The 7.5-acre project area contained within parcel 93035300000 consists of 1.86 acres of on-bottom Pacific oysters and Manila clams, 0.25 acres of rack-and-bag culture Pacific oysters, and replacement of 0.8 acres of previous clam/oyster acreage with Pacific geoduck; there is a total of 2.91 acres of cultivation. The 2.74-acre project area contained within parcel 93035400000 consists of on-bottom culture of 0.17 acres Pacific oysters and Manila clams. Additionally, secondary crops from natural set of Manila clams, butter clams, cockles, littleneck clams, mussels, etc. occur across cultivated area of the Project area.

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 seeded by hand directly onto the beach substrate. Natural spawning and setting of clams also occur at some locations on the farm. After seeding, predator exclusion nets may be used to cover the clam bed, with edges anchored using rebar or buried in the substrate. Netting is monitored and removed seasonally. Manila 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 numbers 93035400000 and 93035300000, near Olympia, Thurston County, Washington; Section 32, Township 19 North, Range 2 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 North 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 prohibited¹. If such work, conditions, or discharges occur, immediately notify² 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

¹ RCW 90.48

² WAC 173-303-145

Division³ 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. Brenner Oyster Company, J.J. Brenner Oyster Company Shellfish Aquaculture: Eld Inlet North 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. **20104** 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 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.

³ RCW 90.56.280

ADDRESS AND LOCATION INFORMATION

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