



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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January 14, 2022

Minterbrook Oyster Company
Attn: Kent Kingman
PO Box 432
Gig Harbor, WA 98335

RE: Water Quality Certification Order No. **20947** for Corps Reference No. **201400589**,
Minterbrook Oyster Minter/Henderson Bay, Pierce County, Washington

Dear Kent Kingman:

On December 3, 2021, Minterbrook Oyster Company submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Minterbrook Oyster Minter/Henderson Bay, located on tidelands within Minter and Henderson Bays, near Gig Harbor, Pierce 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 Jennifer Riedmayer by e-mail at Jennifer.Riedmayer@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described within the Order.

Sincerely,

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

Minterbrook Oyster Minter/Henderson Bay
Order No. 20947, Corps No. 201400589
Aquatics No. 140037
January 14, 2022
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Enclosure

e-cc: Thomas Sentner, Corps of Engineers (Corps)
Loree' Randall, Ecology
Jennifer Riedmayer, Ecology
ecyrefedpermits@ecy.wa.gov
Aquaculture-Reinforcement-Team@usace.army.mil

IN THE MATTER OF GRANTING A) ORDER No. 20947
WATER QUALITY) Corps Reference No. 201400589
CERTIFICATION TO) Minterbrook Oyster Minter/Henderson Bay
Minterbrook Oyster Company) located on tidelands within Minter and
pursuant to 33 U.S.C. 1341 (FWPCA) Henderson Bays, near Gig Harbor, Pierce
§ 401), RCW 90.48.120, RCW 90.48.260) County, Washington
and Chapter 173-201A WAC)

Minterbrook Oyster Company
Attn: Kent Kingman
PO Box 432
Gig Harbor, WA 98335

On December 3, 2021, Minterbrook Oyster Company submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Minterbrook Oyster Minter/Henderson Bay, Pierce County, Washington. The Department of Ecology (Ecology) issued a public notice for the project on December 9, 2021.

This project proposes to commercially cultivate up to 86 acres of Pacific oysters (*Crassostrea gigas*), Olympia oysters (*Ostrea lurida*) and Manila clams (*Venerupis philippinarium*) between 6.0 feet (ft.) and -4.5 ft. Mean Lower Low Water (MLLW) tidal elevation on parcel numbers 0122294002, 0122283004, 6030100025, 6030100090, 6030100100, 6300100110, 6030100121, 6030100122, 6030100130, 6030100140, 603010051, and 6030100161. Access to tidelands is by boat.

Oysters at this location will be grown in three ways for approximately two to three years:

- 1) On-bottom culture: Oyster seed will be placed directly on the tidelands substrate to mature for harvest by hand at low tide.
- 2) Bag-on-bottom-culture: Oyster seed would be placed in mesh bags attached to ropes on the bottom and secured with rebar stakes on the substrate until mature and harvested by hand at low tide.
- 3) Suspended culture: Oyster seed will be placed in AquaPurse containers attached to rope lines that are suspended 6-12 inches off the bottom and attached to steel posts. The oyster seed would be grown in the AquaPurse containers and then transferred directly onto the substrate when the oysters have reached a suitable size.

Clams cultivated at this location for two to three years. Clams will be seeded directly on the substrate and will be covered with poly 12mm – 8 mm area netting that is secured with rebar stakes for predator exclusion. Clams will be harvested by hand or mechanically using a clam digger. The clam digger is a modified tulip bulb harvester that is engine-propelled four-wheeled machine that mechanically removes market-sized clams from the substrate.

Gravelling or “frosting” is proposed at this location on approximately 20 acres of tidelands. Cleaned and washed gravel mixed with shell fragments will be discharged from the deck of a

floating barge to a depth of less than one inch annually. Approximately 30 yards of pea gravel per acre will be applied when needed.

The project site is located on tidelands within Minter and Henderson Bays, on parcel numbers 0122294002, 0122283004, 6030100025, 6030100090, 6030100100, 6300100110, 6030100121, 6030100122, 6030100130, 6030100140, 603010051, and 6030100161, adjacent to 12002 114th Street Court NW, near Gig Harbor, Pierce County, Washington; Section 29, Township 22 North, Range 1 East; WRIA 15, Kitsap Watershed.

With this Order, Ecology is granting Minterbrook Oyster Company's request for a Section 401 Water Quality Certification for the Minterbrook Oyster Minter/ Henderson Bay project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on December 3, 2021, and the following supporting documentation:

1. E-mail letter to Ecology dated December 8, 2021, regarding the project's compliance with the conservation measures associated with the "Programmatic Biological Opinions for Shellfish Activities in Washington State Inland Marine Waters" (U.S. Fish and Wildlife Service (USFWS) Reference Number 01EWF00-2016-F-0121, National Marine Fisheries Service (NMFS) Reference Number WCR-2014-1502). This email also includes a description of Minterbrook Oyster Company water quality monitoring plan, and Minterbrook Oyster Company commitment to follow the 2019 Puget Sound Shellfish Growers Association Environmental Codes of Practice for Shellfish Aquaculture.

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, Minterbrook 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 Minterbrook 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. If such work, conditions, or discharges occur, immediately notify 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 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 Minterbrook Oyster Company, Minterbrook Oyster Minter/Henderson Bay 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. **20947** will remain valid for the duration of the associated DA permit. Minterbrook 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.

Address and location information

Filing an appeal with the PCHB:

Mailing Address:

Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

Street address:

Pollution Control Hearings Board
1111 Israel RD SW
STE 301
Tumwater, WA 98501

Serving a copy of the appeal on Ecology:

Mailing Address:

Department of Ecology
Attn: Appeals Processing Desk
PO Box 47608
Olympia, WA 98504-7608

Street Address:

Department of Ecology
Attn: Appeals Processing Desk
300 Desmond Drive SE
Lacey, WA 98503

CONTACT INFORMATION

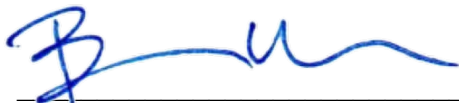
Please direct all questions about this Order to:

Jennifer Riedmayer
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600
Jennifer.Riedmayer@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

January 14, 2022
Date