



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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April 8, 2022

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

Re: Water Quality Certification Order No. **21090** for Corps Reference No. **200800509**,
Roundtree Leases, Mason County, Washington

Dear Bruce Harlan Brenner:

On February 10, 2022, J.J. Brenner Oyster Co. submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Roundtree Leases located on tidelands within Little Skookum Inlet, near Shelton, Mason 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,

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

Roundtree Leases
Order No. 21090, Corps No. 200800509
Aquatics No. 138588
April 8, 2022
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Enclosure

E-cc: Jordan Bunch, U.S. Army Corps of Engineers
Loree' Randall, Ecology
Teresa Pucylowski, Ecology
ecyrefedpermits@ecy.wa.gov
Aquaculture-Reinforcement-Team@usace.army.mil

**IN THE MATTER OF GRANTING A
WATER QUALITY CERTIFICATION TO**

J.J. Brenner Oyster Co.
pursuant to 33 U.S.C. 1341 (FWPCA
§ 401), RCW 90.48.120, RCW 90.48.260
and chapter 173-201A WAC

ORDER No. 21090

Corps Reference No. 200800509

Roundtree Leases located on tidelands
within Little Skookum Inlet, near Shelton,
Mason County, Washington

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

On February 10, 2022, J.J. Brenner Oyster Company submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Roundtree Leases, Mason County, Washington. The U.S. Army Corps of Engineers (Corps) issued a joint public notice on March 16, 2022.

This project will continue to commercially cultivate Manila clams and Pacific, Kumamoto, and Olympia oysters on about 6.0 acres of privately-owned tidelands between the +3.5ft and -4.0ft Mean Lower Low Water (MLLW) line. The cultivation area will be within 3.3 acres: up to 0.9 acres of oysters will be farmed between +0.5ft and -4.0ft MLLW; and up to 2.4 acres of Manila clams will be farmed between +3.5ft and -0.5ft MLLW. Other primary and secondary commercial shellfish species may be naturally present and then harvested such as Manila clams, butter clams, littleneck clams, cockles, mussels, etc. There is no eelgrass present and all farm areas are accessed by boat or by land via private or public access.

Most oysters are grown directly on the beach substrate. 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 may also be 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. The grow-out period for oysters is 18 to 48 months.

Manila clam beds are prepared by applying a thin layer (up to 0.5”) of washed pea gravel mixed with shell fragments directly to the substrate. This activity occurs up to twice annually (up to approximately 70 cubic yards in total per frosting event). Clams are seeded by hand directly onto the frosted 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. Clams are harvested by hand, e.g. rake picking.

The project site is located on tidelands within Little Skookum Inlet, on parcel numbers 31911-21-70100, 31911-22-80021, and 31910-22-70200, near Shelton, Mason County, Washington; Sections 10 and 11, Township 19 North, Range 3 West; WRIA 14, Kennedy-Goldsborough Watershed.

With this Order, Ecology is granting J.J. Brenner Oyster Company's request for a Section 401 Water Quality Certification for the Roundtree Leases project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on February 10, 2022.

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 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 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, Roundtree Leases project.

¹ RCW 90.48

² WAC 173-303-145

³ RCW 90.56.280

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. **21090** 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.

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:

Teresa 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

April 8, 2022

Date