



**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

Southwest Region Office

PO Box 47775, Olympia, WA 98504-7775 • 360-407-6300

December 2, 2022

City of Battle Ground
ATTN: Mark Herceg
109 SW 1st Street
Battle Ground, WA 98604

Re: Section 401 Water Quality Certification Denial without Prejudice, Order No. 21462,
U.S. Army Corps of Engineers (Corps) Reference No. NWS-2021-1183, SW Eaton Boulevard,
SR-503 to SW 20th Ave. Project, Clark County, Washington

Dear Mark Herceg:

On December 22, 2021, the Department of Ecology (Ecology) received a request for a Section 401 Water Quality Certification for the above-referenced project. Ecology has one year from the Section 401 Water Quality Certification request to issue its decision.

At this time Ecology has not received the necessary information to have reasonable assurance that the project will meet state water quality laws. Therefore, pursuant to Section 401 of the Clean Water Act, Chapter 90.48 RCW, and Chapter 173-201A WAC, Ecology is denying without prejudice the City of Battle Ground's request for a Section 401 Water Quality Certification.

Receipt of a denial without prejudice does not preclude you from submitting a new request for a Section 401 Water Quality Certification at a later date.

If you have any questions, please contact Lori Kingsbury at Lori.kingsbury@ecy.wa.gov. The Enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in blue ink, appearing to read "Maria Sandercock".

Maria Sandercock, Section Manager
Shorelands and Environmental Assistance Program
Southwest Region Office

Enclosure

ec: Jim Carsner, U.S. Army Corps of Engineers
Kristen Currens, MacKay Sposito
Loree' Randall, Ecology
Lori Kingsbury, Ecology
Lori White, Ecology
ECYREFEDPERMITS@ecy.wa.gov

IN THE MATTER OF DENYING SECTION)	ORDER No. 21462
401 WATER QUALITY CERTIFICATION TO)	Corps Reference No. NWS-2021-1183
City of Battle Ground)	SW Eaton Boulevard, SR-503 to SW 20th
in accordance with 33 U.S.C. 1341)	Ave., Clark County, Washington
(FWPCA § 401), RCW 90.48.260 and)	
Chapter 173-201A WAC)	

City of Battle Ground
Attn: Mark Herceg
109 SW 1st Street
Battle Ground, WA

On December 22, 2021, the Department of Ecology (Ecology) received a request for a Section 401 Water Quality Certification (WQC) via a Joint Aquatic Resources Permit Application (JARPA) for the above-referenced project. Ecology has one year from the receipt of the request for a WQC to issue its decision.

On October 14, 2022, Ecology had a meeting with your agent to discuss changes to your project and the lack of an approved out of service area request for the mitigation plan. Ecology pointed out the approaching December 22, 2022 deadline. You confirmed via e-mail to Ecology on October 25, 2022, that you would not be able to submit the revised JARPA with the revised impact information along with a Mitigation Bank Use Plan in time for Ecology to complete the review process by the one-year deadline of December 22, 2022.

Without this information, there is not reasonable assurance that the project will meet state water quality laws. With the statutory deadline approaching, Ecology must deny the WQC at this time. Therefore, pursuant to Section 401 of the Clean Water Act, Chapter 90.48 RCW, and Chapter 173-201A WAC, the City of Battle Ground's request for a WQC is denied without prejudice.

Receipt of a denial without prejudice does not preclude you from submitting the information identified above with a new request for a WQC at a later date.

Your right to appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt. The appeal process is governed by RCW 43.21B and WAC 371-08. "Date of receipt" is defined in RCW 43.21B.001(2). More information is available at <https://eluhwa.wa.gov/content/11>.

To appeal, you must do all of the following within 30 days of the date of receipt of this Order:

- File your notice of appeal and a copy of this Order with the PCHB (see filing options below). "Filing" means actual receipt by the PCHB during regular business hours as defined in WAC 371-08-305 and -335. "Notice of appeal" is defined in WAC 371-08-340.

- Serve a copy of your notice of appeal and this Order on the Department of 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 RCW 43.21B and WAC 371-08.

Filing an appeal with the PCHB:

For the most current information regarding filing with the PCHB, visit:

<https://eluhwa.gov/content/11>

Filing by mail

Mailing Address:

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

Filing in person (or by certified mail/courier)

Street Address:

Pollution Control Hearings Board
1111 Israel RD SW, Suite 301
Tumwater, WA 980501

Filing electronically

E-mail Address:

pchb-shbappeals@eluhwa.gov

Serving a copy of the appeal on Ecology:

Electronic copies of appeals are not accepted at the Department of Ecology per WAC 371-08-305(10).

Filing by mail

Mailing Address:

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

Filing in person (or by certified mail/courier)

Street Address:

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

Signature



Maria Sandercock, Section Manager
Shorelands and Environmental Assistance Program
Southwest Region Office
Department of Ecology

December 2, 2022

Date