



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600, Olympia, WA 98504-7600 • 360-407-6000

August 1, 2023

RS Construction Services, LLC
ATTN: Rick Stephens
2135 Highland Drive
Camano Island, WA 98282

Re: Section 401 Water Quality Certification Denial without Prejudice, Order No. **21539** U.S. Army Corps of Engineers (Corps) Reference No. NWS-2021-0890, 1051 S Cavalero Bulkhead Replacement, Island County, Washington

Dear Rick Stephens:

On August 6, 2022, RS Construction Services, LLC submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the 1051 S Cavalero Bulkhead Replacement, King County, Washington.

At this time Ecology has not received the necessary information needed to assure that the discharges from the project will meet state water quality laws and requirements. Therefore, pursuant to Section 401 of the Clean Water Act, Chapter 90.48 RCW, and Chapter 173-201A WAC, Ecology is denying without prejudice RS Construction Services, LLC 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 about this decision, please contact Sonia Mendoza at (360) 918-1342. The enclosed WQC Order may be appealed by following the procedures described within.

Sincerely,

Loree' Randall, Section Manager
Federal Permitting Section
Shorelands and Environmental Assistance Program

WQC Order No. 21539, Corps No. NWS-2021-0890

Aquatics ID No. 141468

August 1, 2023

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Enclosure (1)

By certified mail: 9489 0090 0027 6383 6851 51

Sent via e-mail: rick@rstephensconstruction.com

E-cc: Rory Lee, U.S. Army Corps of Engineers
Allison Martin, Davido Consulting Group, Inc.
Sonia Mendoza, Ecology
ECYREFEDPERMITS@ecy.wa.gov

In The Matter of Denying Section 401 Water Quality
Certification to RS Construction Services, LLC
pursuant to 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW
90.48.260 and Chapter 173-201A WAC

RS Construction Services, LLC
ATTN: Rick Stephens
2135 Highland Drive
Camano Island, WA 98282

WQC Order No.	21539
Corps Reference No.	NWS-2021-0890
Site Location	1051 S Cavalero Bulkhead Replacement Project located within Port Susan, Camano Island, Whatcom County, Washington.

On August 6, 2022, the Department of Ecology (Ecology) received a request for a Section 401 Water Quality Certification (WQC) and 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 July 11, 2023, Ecology sent you an e-mail explaining that we needed State Environmental Policy Act (SEPA)¹ in order to issue a WQC.

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, RS Construction Services, LLC 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 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 all of the following within 30 days of the date of receipt of this Order:

¹ RCW 43.21C and WAC 197-11

- File your notice of appeal and a copy of this Order with the PCHB (see filing information 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 mail, in person, or by email (see addresses below).

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Filing an appeal

Filing with the PCHB

For the most current information regarding filing with the PCHB, visit: <https://elaho.wa.gov/> or call: 360-664-9160.

Service on Ecology

Street Addresses:

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

Mailing Addresses:

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

E-Mail Address:

ecologyappeals@ecy.wa.gov

Contact Information

Please direct all questions about this Order to:

Sonia Mendoza
Department of Ecology
(360) 918-1342
Sonia.mendoza@ecy.wa.gov

More Information

- **Pollution Control Hearings Board Website**
<https://www.eluho.wa.gov>
- **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

Dated this 1st day of August, 2023, at the Department of Ecology, Lacey, Washington.



Loree' Randall, Section Manager
Federal Permitting Section
Shorelands and Environmental Assistance Program