



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Region Office
PO Box 330316, Shoreline, WA 98133-9716 • 206-594-0000

May 7, 2024

Port of Bremerton
Attn: James Weaver
8850 SW State Highway 3
Bremerton, WA 98312

Re: Water Quality Certification Order No. **22609** (Corps No. **NWS-2022-0513**), Port Orchard Marina Breakwater Replacement, Kitsap County, Washington

Dear James Weaver:

On February 16, 2024, the Port of Bremerton submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Port Orchard Marina Breakwater Replacement, Kitsap County, Washington.

On behalf of the state of Washington, the Department of Ecology certifies with conditions that the work described in the Water Quality Certification Request and supplemental documents 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 enclosed Water Quality Certification Order (WQC Order).**

Please ensure that anyone doing work under this WQC Order has read, is familiar with, and is able to follow all of the provisions within the attached WQC Order.

If you have any questions about this decision, please contact Austin Schmalz at (425) 301-6989. The enclosed WQC Order may be appealed by following the procedures described within.

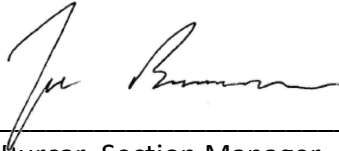
WQC Order No. 22609, Corps No. NWS-2022-0513

Aquatics ID No. 139561

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Sincerely,



Joe Burcar, Section Manager
Northwest Region Office
Shorelands and Environmental Assistance Program

Enclosure (1)

By certified mail: 9489 0090 0027 6381 5324 95

Sent via e-mail: jamesw@portofbremerton.org

E-cc: Trevor Williams, U.S. Army Corps of Engineers
Jason Stutes, David Evans and Associates, Inc.
Loree' Randall, Ecology
Austin Schmalz, Ecology
ECYREFEDPERMITS@ecy.wa.gov

**In The Matter of Granting a Water Quality
Certification with Conditions to Port of Bremerton
pursuant to 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW
90.48.260 and Chapter 173-201A WAC**

Port of Bremerton
Attn: James Weaver
8850 SW State Highway 3
Bremerton, WA 98312

WQC Order No.	22609
Corps Reference No.	NWS-2022-0513
Site Location	Port Orchard Marina Breakwater Replacement project located within Sinclair Inlet, Port Orchard, Kitsap County, Washington.

The Port of Bremerton submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Port Orchard Marina Breakwater Replacement, Kitsap County, Washington. The following processing dates are listed below:

- On 6/2/2023, the U.S. Army Corps of Engineers (Corps) sent a permit notification to Ecology that indicated that they are processing the project under Nationwide Permit (NWP) Program.
- On 11/7/2023 the Port of Bremerton submitted a pre-filing meeting request.
- On 2/16/2024, the Department of Ecology (Ecology) received a request for Clean Water Section 401 Water Quality Certification.
- On 2/29/2024, Ecology issued a public notice for the project.
- Ecology's "Reasonable Period of Time" for this project has been established as 8/14/2024.

The project proposes to replace the solid gangway with an ADA-compliant grated gangway, replace solid approach floats with grated approach floats, replace the north and east solid breakwater floats with new solid north and east breakwater floats, remove creosote treated timber piles and stake piles, and replace the piles with new steel piles and new steel plate anchors that are embedded below the mudline.

The project site is located at the Port Orchard Marina, Sinclair Inlet, Kitsap County, Washington, Section 26, Township 24 N., Range 1 E., within Water Resource Inventory Area (WRIA) 15, the Kitsap WRIA.

With this WQC Order, Ecology is granting with conditions the Port of Bremerton's request for a Section 401 Water Quality Certification for the Port Orchard Marina Breakwater Replacement project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on 2/16/2024 and the Water Quality Monitoring Plan dated 3/15/2024.

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, the Port of Bremerton 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 the Port of Bremerton 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 Conditions:

1. This Certification is not effective until the U.S. Corps of Engineers (Corps) Seattle District issues a Department of the Army (DA) permit for this project. WQC Order No. 22609 will remain valid for the duration of the associated Corps permit for the project.
 - Justification – Certifications are required for any license or permit that authorizes an activity that may result in a discharge or fill material into waters. This WQC Order is not valid until the Federal agency issues a permit. Additionally, Ecology needs to be able to specify how long the WQC Order will be in effect.
 - Citation – Chapter 90.48 RCW, Chapter 173-201A WAC, and WAC 173-225-010.
2. All submittals required by this WQC Order shall be sent to Ecology's Headquarters Office, Attn: Federal Permit Manager, via e-mail to fednotification@ecy.wa.gov and cc to Austin.Schmalz@ecy.wa.gov. The submittals shall be identified with WQC Order No. 22609 and include the Project Proponent's name, Corps permit number, project name, project contact, and the contact phone number.
 - Justification - Ecology needs to identify where information and submittals are to be submitted to be in compliance with the requirements of this WQC Order.

- Citation - Chapter 90.48 RCW, RCW 90.48.120, RCW 90.48.260, Chapter 173-201A WAC, and WAC 173-225-010.
3. The Project Proponent shall send (per condition 2) a copy of the final Federal permit via e-mail to fednotification@ecy.wa.gov and cc to Federal Permit Manager prior to the starting of any work authorized by this WQC Order.
- Justification - This condition is needed to ensure that the federal permit has been issued and all the conditions of the WQC Order have been included into the federal permit.
 - Citation - 40 CFR 121.10, 40 CFR 121.11, and Chapter 90.48 RCW.
4. To transfer this WQC Order to a new owner or operator the Project Proponent shall:
- a. Complete a Request for Transfer of Order with a specific transfer date of the WQC Order's obligations, coverage, and liability and submit it to Ecology per condition 2. Link to form:
<https://apps.ecology.wa.gov/publications/SummaryPages/ECY070695.html>;
 - b. Provide a copy of this WQC Order to the new owner or operator; and
 - c. The transfer is not considered valid until the Project Proponent receives written notification from Ecology that the transfer has been approved.
- Justification – Ecology has independent state authority to ensure protection of state water quality. Ecology needs to ensure that anyone conducting work at the project, including any new owners or operators, are aware of and understand the required conditions of this WQC Order to ensure compliance with the water quality standards and other applicable state laws.
 - Citation – 40 CFR 121.5, Chapter 90.48 RCW, RCW 90.48.030, Chapter 173-201A WAC, and WAC 173-225-010.
5. Water quality monitoring results shall be submitted upon request to Ecology's Federal Permit Manager, per condition 2.
- Justification - Ecology must protect waters of the state from all discharges and potential discharges of pollution and prevent exceedances of the water quality standards that protect aquatic life and beneficial uses.

- Citation - Chapter 90.48 RCW, RCW 90.48.030, RCW 90.48.080, Chapter 173-201A WAC, WAC 173-201A-300 - 330, WAC 173-204-120, and WAC 173-225-010.
6. 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 Division³ at 1-800-258-5990, for spills to water only. This condition is necessary to prevent oil and other 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 with conditions to the Port of Bremerton for the Port Orchard Marina Breakwater Replacement project.

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:

- 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.

¹ RCW 90.48

² WAC 173-303-145

³ RCW 90.56.280

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

Americans with Disabilities Act Information

Accommodation Requests

To request ADA accommodation including materials in a format for the visually impaired, call Ecology at 360-407-6831 or visit <https://ecology.wa.gov/accessibility>. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.

Contact Information

Please direct all questions about this WQC Order to:

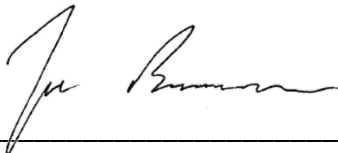
Austin Schmalz
Department of Ecology
(425) 301-6989
Austin.Schmalz@ecy.wa.gov

More Information

- **Pollution Control Hearings Board Website**
<https://elaho.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 7th day of May, 2024 at the Department of Ecology, Shoreline, Washington.



Joe Burcar, Section Manager

Northwest Region Office

Shorelands and Environmental Assistance Program