



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

May 15, 2024

Rainier RCL, LLC
Attn: Chris Leier
9713 233rd Avenue East, Suite A
Bonney Lake, WA 98391

Re: Section 401 Water Quality Certification Denial without Prejudice, Order No. **22839**,
(Corps No. **NWS-2023-0354**), Peak 410 Business Park, Pierce County, Washington

Dear Chris Leier:

On May 22, 2023, 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 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 Rainier RCL LLC (Chris Leier)'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 Zach Meyer at (360) 481-9885 or Zachary.Meyer@ecy.wa.gov. The Enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

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

Enclosure (1)

WQC Order No. 22839, Corps No. NWS- 2023-0354

Aquatics ID No. 142566

May 15, 2024

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By certified mail: 9489 0090 0027 6102 3067 25

Sent via e-mail: chris@teeter.com

E-cc: LeeAnn Simmons, U.S. Army Corps of Engineers

Hannah Fotherby, Anchor QEA LLC

Dan Berlin, Anchor QEA LLC

Josh Jensen, Anchor QEA LLC

Loree' Randall, Department of Ecology

Zach Meyer, Department of Ecology

ECYREFEDPERMITS@ecy.wa.gov

**In The Matter of Denying Section 401 Water Quality
Certification to Rainier RCL LLC (Chris Leier)
pursuant to 33 U.S.C. 1341 (FWPCA § 401),
RCW 90.48.260 and Chapter 173-201A WAC**

Rainier RCL, LLC
Attn: Chris Leier
9713 233rd Avenue East, Suite A
Bonney Lake, WA 98391

WQC Order No.	22839
Corps Reference No.	NWS-2023-0354
Site Location	Peak 410 Business Park located within Fennel Creek and wetlands, Bonney Lake, Pierce County, Washington.

On May 22, 2023, the Department of Ecology (Ecology) received a request for a Section 401 Water Quality Certification (WQC) for the above-referenced project. Ecology has one year from the receipt of the request for a WQC to issue its decision.

On April 3, 2024, and April 22, 2024, Ecology sent you an email explaining that we needed a compensatory mitigation plan that is consistent with Ecology/Corps Wetland Mitigation in Washington State Part 1: Agency Policies and Guidance, 2021 and Ecology/Corps Wetland Mitigation in Washington State Part 2: Developing Mitigation Plans, 2006, and addressed the following concerns:

1. Mitigation sequencing - The document does not provide rationale for why impacts to waters are unavoidable. Please provide a mitigation sequencing analysis.
2. Site plans - Site plans in wetland report do not show the ditch between HWY 410 and wetland A. Please include all aquatic resources on your site plans including this feature.
3. Mitigation site buffers - Ecology/Corps guidance requires an 80 foot buffer on compensatory mitigation sites (see Table 6C.3 of Ecology/Corps Wetland Mitigation in Washington State Part 1: Agency Policies and Guidance, 2021). The proposed 35 foot buffer is insufficient. Credit generating compensatory mitigation requires an appropriate buffer.
4. Indirect impacts and mitigation ratios - The proposed 0.1 of direct ratio is inconsistent with Ecology/Corps guidance of 0.5 of direct ratio. No justification for the reduction is provided. Indirect impacts would also be calculated using the 80 foot buffer required from Granger et al., 2005, Appendices 8C and 8D. Please see section 3.4.5 and 6B.4.7 of Ecology/Corps Wetland Mitigation in Washington State Part 1: Agency Policies and Guidance, 2021. Calculation of indirect impacts needs to be updated.

5. Mitigation performance standards - The report does not provide adequate performance standards for measuring success. Please see section 3.4.2 of Ecology/Corps Wetland Mitigation in Washington State Part 2: Developing Mitigation Plans, 2006 for performance standard recommendations. For example, a performance standard to demonstrate wetland hydrology in creation area would be required.
6. Mitigation monitoring period - Ecology requires a 10 year monitoring period.

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, Rainier RCL LLC (Chris Leier)'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 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 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 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.

WQC Order No. 22839, Corps No. NWS-2023-0354

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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

Signature

Dated this 15th day of May, 2024, at the Department of Ecology, Lacey, Washington.



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