



STATE OF WASHINGTON  
**DEPARTMENT OF ECOLOGY**

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

October 18, 2024

Port of Anacortes  
ATTN: Kevin Anderson  
100 Commercial Avenue  
Anacortes, WA 98221

Re: Water Quality Certification Order No. **23293** (Corps No. **NWS-2023-0582**), T Dock Reconfiguration, Skagit County, Washington

Dear Kevin:

On March 20, 2024, Port of Anacortes submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the T Dock Reconfiguration, Skagit 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 Schmal at (425) 301-6989 or [austin.schmalz@ecy.wa.gov](mailto:austin.schmalz@ecy.wa.gov). The enclosed WQC Order may be appealed by following the procedures described within.

Sincerely,

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

Enclosure (1)

WQC Order No. 23293, Corps No. NWS-2023-0582

Aquatics ID No. 142975

October 18, 2024

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By certified mail: 9171 9690 0935 0233 1419 35

Sent via e-mail: [Kevin.Anderson@portofanacortes.com](mailto:Kevin.Anderson@portofanacortes.com)

E-cc: Kristin Murray, U.S. Army Corps of Engineers

Larry Lehman, Grette Associates

Erin Hanlon Brown, Ecology

Austin Schmalz, Ecology

[ECYREFEDPERMITS@ecy.wa.gov](mailto:ECYREFEDPERMITS@ecy.wa.gov)

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

Port of Anacortes  
Attn: Kevin Anderson  
100 Commercial Avenue  
Anacortes, WA 98221

<b>WQC Order No.</b>	23293
<b>Corps Reference No.</b>	NWS-2023-0582
<b>Site Location</b>	T Dock Reconfiguration located within Fidalgo Bay, Anacortes, Skagit County, Washington.

The Port of Anacortes submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the T Dock Reconfiguration, Skagit County, Washington. The required processing dates are listed below:

- On 8/17/2023, the Port of Anacortes submitted a pre-filing meeting request.
- On 3/20/2024, Ecology received a request for Clean Water Section 401 Water Quality Certification.
- On 4/15/2024, the Port of Anacortes submitted additional information, and the Department of Ecology (Ecology) considered the Request valid on this date.
- On 4/22/2024, Ecology issued a public notice for the project.
- Ecology’s “Reasonable Period of Time” for this project has been established as 3/20/2025.

This project proposes to demolish and replacing an aging commercial dock in the Port’s Cap Sante Marina located in Anacortes, Washington. The project will demolish the existing creosote treated structure including decking, stringers, pile caps, bull rails, and piles. 115 creosote treated piles and 29 ammoniacal copper zinc arsenate treated piles will be removed. Approximately 130 cubic yards of riprap will be removed from the top of the bank. A sheetpile bulkhead and concrete backwall will be installed in place of the riprap. The reconfigured T Dock will be built on 40 new steel pipe piles and will be constructed with concrete pile caps, pre-cast deck panels, and steel pipe bull rails. In addition to the structural support piles, 24 galvanized steel pipe fender piles will be installed along the eastern side of the pier. HDPE pipe fender sleeves will be fitted around all fender piles following installation. Mitigation for the project includes removal of 115 creosote treated wood piles, stringers, pile caps, and decking; removal

of submerged creosote pile stubs adjacent to T Dock; and installation of 10 large woody debris structures in the marina basin for habitat.

The project site is located at the Cap Sante Marina, Fidalgo Bay, Skagit County, Washington, Section 19, Township 35 N., Range 02 E., within Water Resource Inventory Area (WRIA) 3, the Low Skagit-Samish WRIA.

With this WQC Order, Ecology is granting with conditions Port of Anacortes's request for a Section 401 Water Quality Certification for the T Dock Reconfiguration project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on 3/20/2024, and the following supporting documentation:

1. The Water Quality BMPs Technical Memorandum document dated 4/15/2024, received on the same date.
2. The Water Quality Monitoring Plan dated 5/13/2024, received on 5/21/2024.

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 Anacortes 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 Anacortes 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 Port of Anacortes 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. **23293** 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. The Port of Anacortes shall send a copy of the final Federal permit via e-mail to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc to Federal Permit Manager prior to the starting of any work authorized by this WQC Order. If the Federal Agency determines the proposed project does not require a Federal permit, the Project Proponent shall immediately inform Ecology.
  - 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.
3. To transfer this WQC Order to a new owner or operator the Port of Anacortes 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 at [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc to Federal Permit Manager. 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.
4. Pile removal, handling, and disposal shall follow the EPA Region 10 Best Management Practices for Piling Removal and Placement in Washington State, dated February 18, 2016.
  - Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.
  - Citations – Chapter 77.55 RCW, Chapter 90.48 RCW, RCW 90.48.030, RCW 90.48.080, Chapter 173-201A WAC, WAC 173-201A-300, WAC 173-201A-330, WAC 173-225-010, and Chapter 220-660 WAC.

5. Water quality monitoring results shall be submitted upon request to Ecology's Federal Permit Manager.
  - Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution and prevent exceedances of other 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 prohibited. If such work, conditions, or discharges occur, immediately notify 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 Division 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.
  - Justification – 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. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.
  - Citation – Chapter 90.48 RCW, RCW 90.48.030, RCW 90.48.080, Chapter 90.56 RCW, RCW 90.56.280, Chapter 173-201A WAC, WAC 173-201A-300 - 330, WAC 173-204-120, WAC 173-225-010, and WAC 173-303-145.

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 Anacortes for the T Dock Reconfiguration 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.

## Filing an appeal

### Filing with the PCHB

For the most current information regarding filing with the PCHB, visit: <https://eluh.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](mailto: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](mailto: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>



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## Signature

Dated this 18 day of October 2024 at the Department of Ecology, Shoreline, Washington.

A handwritten signature in black ink, appearing to read "Joe Burcar". The signature is written in a cursive style with a large initial "J" and "B".

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Joe Burcar, Section Manager

Northwest Region Office

Shorelands and Environmental Assistance Program