



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

April 17, 2025

Diana Smyth
P.O. Box 1529
Freeland, WA 98249

Re: Water Quality Certification Order No. **23549** (Corps No. NWS-2024-486), Smyth Bulkhead Replacement, Island County, Washington

Dear Diana Smyth:

On 1/14/2025, Diana Smyth submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Smyth Bulkhead Replacement, Island 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 Erin Everton at (564) 250-5556. The enclosed WQC Order may be appealed by following the procedures described within.

Sincerely,

Loree' Randall, Section Manager
Aquatic Permitting & Protection Section
Shorelands and Environmental Assistance Program

WQC Order No. 23549, Corps No. NWS-2024-486

Aquatics ID No. 144364

April 17, 2025

Page 2 of 2

Enclosure (1)

By certified mail: 91 7199 9991 7036 8715 4720

Sent via e-mail: dianalsmyth@gmail.com

E-cc: Jamie Liljegren, U.S. Army Corps of Engineers

Allison Martin, Facet

Erin Hanlon Brown, Ecology

Erin Everton, Ecology

ecyrefedpermits@ecy.wa.gov

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

Diana Smyth
P.O. Box 1529
Freeland, WA 98249

WQC Order No.	23549
Corps Reference No.	NWS-2024-486
Site Location	Smyth Bulkhead Replacement located within Mutiny Bay, Island County, Washington.

Diana Smyth submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Smyth Bulkhead Replacement, Island County, Washington. The required processing dates are listed below:

- On 9/12/2024, Diana Smyth submitted a pre-filing meeting request.
- On 1/14/2025, Ecology received a request for Clean Water Section 401 Water Quality Certification.
- On 1/15/2025, the U.S. Army Corps of Engineers (Corps) sent an email notification to Ecology that they are reviewing the project for authorization under the Nationwide Permit (NWP) Program.
- On 2/11/2025, Ecology issued a public notice for the project.
- Ecology's "Reasonable Period of Time" for this project has been established as 7/13/2025.

This project proposes to remove an existing 50-linear foot (LF) concrete bulkhead and to install a 50 LF concrete bulkhead landward of the high tide line within Mutiny Bay in Freeland, Island County, Washington. The replacement armoring would be installed up to six feet landward of the existing structure. A trench would be excavated to install the replacement bulkhead footing and subgrade. Segments of the proposed wall would then be formed using plywood and rebar cages and a concrete truck staged in the uplands would pour concrete into the installed forms. The concrete would contain 2% calcium content by volume to encourage hardening within one hour. The installed armoring would be backfilled with native soil removed during excavation activities. The existing bulkhead would then be removed after the concrete has cured for three to seven days. The structure would be removed during low tides in the dry using an excavator. Fill material would then be placed within any remaining voids following the bulkhead removal as necessary.

The project site is located at 6272 Barr Beach Road, Mutiny Bay, Island County, Washington, Section 22, Township 29 N., Range 2 E., within Water Resource Inventory Area (WRIA) 6 Island.

With this WQC Order, Ecology is granting with conditions Diana Smyth's request for a Section 401 Water Quality Certification for the Smyth Bulkhead Replacement project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on 1/14/2025.

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, Diana Smyth 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 Diana Smyth 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 Diana Smyth 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. **23549** will remain valid until 2/15/2027.
 - 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. Diana Smyth shall send a copy of the final Federal permit via e-mail to fednotification@ecy.wa.gov and cc to Erin.Everton@ecy.wa.gov 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, Diana Smyth 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 Diana Smyth 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 and cc to Erin.Everton@ecy.wa.gov. 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 Diana Smyth 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. 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 Diana Smyth for the Smyth Bulkhead 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 by 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.

Address and Location Information

Filing with the PCHB

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

Service on Ecology

Street Address:

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

Mailing Address:

Department of Ecology
Attn: Appeals Processing Desk

WQC Order No. 23549, Corps No. NWS-2024-486

Aquatics ID No. 144364

April 17, 2025

Page 5 of 6

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:

Erin Everton

Department of Ecology

564-250-5556

Erin.Everton@ecy.wa.gov

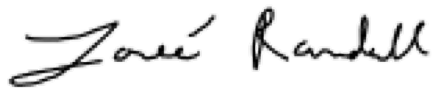
More Information

- **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 17th day of April 2025 at the Department of Ecology, Lacey, Washington.



Loree' Randall, Section Manager
Aquatic Permitting & Protection
Shorelands and Environmental Assistance Program