



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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May 4, 2020

Olympia Oyster Company
ATTN: Tim McMillin
1042 SE Bloomfield Road
Shelton, WA 98594

RE: Water Quality Certification Order No. **18126** for Corps Public Notice No. **NWS-2018-570**, Olympia Oyster Company Shellfish Processing Plant, Mason County, Washington

Dear Tim McMillin:

On May 7, 2019, the Olympia Oyster Company submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Olympia Oyster Company Shellfish Processing Plant in Shelton, Mason County, Washington.

On behalf of the state of Washington, Ecology certifies that the work described in the JARPA and the public notice 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 conditions contained in the enclosed Order.

If you have any questions, please contact Lori Kingsbury at (360) 407-6926. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in blue ink, appearing to read "Perry J Lund", is written over a blue circular stamp. The stamp is partially obscured by the signature.

Perry J Lund, Section Manager
Southwest Regional Office
Shorelands and Environmental Assistance Program

Enclosure

ec: Jason Sweeney, Corps of Engineers
Racheal Villa, Soundview Consultants
ECY RE FEDPERMITS
Loree' Randall, ECY, HQ, SEA
Lori Kingsbury, ECY, SWRO, SEA
Rebecca Rothwell, ECY, SWRO, SEA
Steve Eberl, ECY, SWRO, WQ
Joyce Mercuri, ECY, SWRO, TCP

IN THE MATTER OF GRANTING A) ORDER No. 18126
WATER QUALITY) Corps Reference No. NWS-2018-570
CERTIFICATION TO) Olympia Oyster Company Shellfish Processing
Olympia Oyster Company) Plant, Oyster Bay of Puget Sound located in
in accordance with 33 U.S.C. 1341) Shelton, Mason County, Washington.
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

Olympia Oyster Company
Attn: Tim McMillan
1042 SE Bloomfield Road
Shelton, WA 98594

On May 7, 2019, the Department of Ecology (Ecology) received Olympia Oyster Company's request for a Section 401 Water Quality Certification (WQC) for the Olympia Oyster Company Shellfish Processing Plant. The U.S. Army Corps of Engineers (Corps) issued a joint public notice for the project on May 29, 2019.

The proposed project entails the replacement of the existing overwater shellfish processing structure; construction of two additional pier, ramp, and float systems; replacement of an existing bulkhead; and, the extension of a breakwater.

The oyster shucking plant and associated infrastructure were constructed in the mid-1950s. The existing building is approximately 6,418 square feet and currently in poor condition. The Applicant currently collects shellfish from the shellfish beds via boat and uses the existing boat ramp to transport the harvested shellfish to land. The work is limited by tides, as the boat ramp is inaccessible during low tides.

The existing 5,273-square-foot overwater structure has solid decking and is supported by 69 creosote piles, creosote timber beams, and concrete pads. The new overwater structure will consist of a 3,000-square-foot building, 1,298 square feet of which will have solid decking.

A 2,411 square foot working platform that is constructed of grated decking will extend waterward to the south and east of the building. A pedestal marine crane will be located on the southeastern edge of the working platform. A new 60-square-foot grated pier, 292-square-foot grated ramp, and 142-square-foot partially grated float would be constructed along the eastern side of the working platform. An additional 1,160-square-foot pier and platform and a 96-square-foot float would be constructed at the southern end of the working platform. The new building and platform will require the placement of thirty-seven 16-inch-diameter steel piles for support.

The project will also replace 388 linear feet of creosote timber bulkhead. The westernmost 56 linear feet of the bulkhead would be replaced with a new rockery bulkhead, and the remaining 330 linear feet of the replacement would be constructed of concrete.

The purpose of the proposed project is to provide safe and functional structures and continued access and moorage along approximately 500 linear feet of the subject property's western shoreline.

The project is located within Oyster Bay of Puget Sound at 1042 Southeast Bloomfield Road, Shelton, Mason County, Washington; NW Quarter of Section 21, Township 19 North, Range 3 West; WRIA No. 14, Kennedy-Goldsborough Watershed.

AUTHORITIES

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§ 1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 302, 303, 306, and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. § 1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available, and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will comply with applicable water quality standards and other appropriate requirements of state law. 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, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Olympia Oyster Company 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 certification absolves Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

A. General Conditions

1. In this Order, the term “Applicant” shall mean the Olympia Oyster Company and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent to the Department of Ecology, Southwest Regional Office, Attn: Federal Permit Manager, SEA Program, PO Box 47775, Olympia, WA 98504-7775 or via e-mail (preferred) to fednotification@ecy.wa.gov with a copy to Lori.kingsbury@ecy.wa.gov. The submittals

shall be identified with Order No. 18126 and include the Applicant name, project name, project contact, and the contact phone number.

3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resource Permit Application (JARPA) received by Ecology on May 7, 2019.
4. The Applicant shall obtain Ecology review and approval before undertaking any changes to the proposed project that might significantly and adversely affect water quality, other than those project changes required by this Order.
5. Within 30 days of receipt of any updated information, Ecology will determine if the revised project requires a new public notice and Water Quality Certification or if a modification to this Order is required.
6. This Order is not effective until the Corps issues a permit for this project.
7. The Applicant shall send (per A.2) a copy of the final Corps permit to Ecology's Federal Permit Manager within two weeks of receiving it.
8. The Applicant shall keep copies of this Order on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
9. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, and/or necessary data collection, to ensure that conditions of this Order are being met.
10. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
11. In the event of changes or amendments to the state water quality, ground water quality, or sediment standards, or changes in or amendments to the state Water Pollution Control Act (RCW 90.48) or the federal Clean Water Act, Ecology may issue an amendment to this Order to incorporate any such changes or amendments applicable to this project.
12. The Applicant shall ensure that all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each signatory that s/he has read and understands the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins.

13. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
14. Failure of any person or entity to comply with the Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.
15. Conditions in this Order apply to all planned phases of the construction and the mitigation for this project.

B. Notification Requirements

1. The following notification shall be made via phone or e-mail (e-mail is preferred) to Ecology's Federal Permit Manager via e-mail to fednotification@ecy.wa.gov with a copy to Lori.kingsbury@ecy.wa.gov. Notifications shall be identified with Order No. **18126** and include the Applicant name, project name, project location, project contact and the contact phone number.
 - a. Immediately following a violation of state water quality standards or when the project is out of compliance with any of this Order's conditions. In addition to the phone or e-mail notification, the Applicant shall submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
 - b. At least ten (10) days prior to conducting initial in-water work activities for each in-water work window.
 - c. At least seven (7) days within project completion.
2. If the project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit a written construction status report (per Condition A.2 of this Order) and submit status reports every 12 months until construction and mitigation are completed.

C. Timing

1. This Order will expire five (5) years from the date of issuance. Continuing this Order beyond the five-year term of this Order will require the Applicant to apply for an extension prior to the expiration of this Order.
2. The following in-water work windows shall apply to this project unless otherwise approved by Ecology:
 - July 15 to February 15 of any year.

3. Any project change that requires a new or revised Hydraulic Project Approval (HPA) from the Department of Fish and Wildlife should be sent to Ecology for review before the change is implemented. Proposed changes shall be implemented only with written approval from Ecology.

D. Water Quality Monitoring & Criteria

1. Oyster Bay is categorized under the Water Quality Standards For Surface Waters of the State of Washington as extraordinary quality, and the criteria of the categorization apply as described in WAC 173-201A-210(1), except as specifically modified by this Order.
2. This Order does not authorize the Applicant to exceed applicable turbidity standards beyond the limits established in WAC 173-201A-210(1)(e)(i).
3. The Applicant shall revise the *Draft Water Quality Monitoring Plan* (WQMP) prepared by Soundview Consultants for Olympia Oyster Company, dated October 4, 2019, to address Ecology comments made on April 23, 2020, and to be consistent with the conditions of this Order. A final Plan shall be submitted to Ecology's Federal Permit Manager (per Condition A.2 of this Order) **for review and approval** at least 30 days prior to beginning any work covered by this Order.
4. The Applicant must provide, in writing, any changes or additions to the WQMP and obtain approval from Ecology's Federal Permit Manager prior to implementation of the changes or additions.
5. Monitoring results shall be submitted to Ecology's Federal Permit Manager weekly during in-water work, per condition A.2.
6. Mitigation and/or additional monitoring may be required if the monitoring results indicate that the water quality standards have not been met.
7. Visible turbidity anywhere beyond the temporary area of mixing (point of compliance) from the activity shall be considered an exceedance of the standard.
8. If water quality exceedances for turbidity are observed outside the point of compliance, work shall cease immediately, and the Applicant or the contractor shall assess the cause of the water quality problem and take immediate action to stop, contain, and correct the problem and prevent further water quality turbidity exceedances.

E. Construction

General Conditions

1. All work in and near waters of the state shall be conducted to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control Best Management Practices (BMPs) suitable to prevent exceedances of state water

quality standards shall be in place before starting maintenance and shall be maintained throughout the duration of the activity.

2. All clearing limits, stockpiles, staging areas, and trees to be preserved shall clearly be marked prior to commencing construction activities and maintained until all work is completed for each project.
3. No stockpiling or staging of materials shall occur at or below the OHWM of any waterbody.
4. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
5. All construction debris, excess sediment, and other solid waste material shall be properly managed and disposed of in an upland disposal site approved by the appropriate regulatory authority.
6. Staging areas will be located a minimum of 50 feet and, where practical, 200 feet, from waters of the state including wetlands. If a staging area must be located within 50 feet of waters of the state, then the Applicant shall provide a written explanation and obtain approval from Ecology's Federal Permit Manager before placing the staging area in the 50-foot setback area.
7. During demolition and construction activities, a containment boom and absorbent pads shall be placed around the perimeter of the work area to capture any debris released into the water. All accumulated debris shall be collected and disposed of at an approved upland disposal site.
8. Project activities shall be conducted to minimize siltation of the beach area and aquatic bed.
9. The Applicant shall contain and appropriately dispose of all saw cut water and debris generated from cutting activities that occur over water so there is no possible entry to waters of the state.

Equipment & Maintenance

10. All equipment that will operate over or within waters of the state shall be free of external petroleum-based products. Accumulation of soils or debris shall be removed from the drive mechanisms and the undercarriage of equipment prior to use. Equipment shall be inspected daily for leaks, accumulation of grease, etc. Any identified problems shall be fixed before operating over or within waters of the state.
11. All equipment operating within or over waters of the state shall utilize biodegradable hydraulic fluid.

12. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
13. In order to prevent contamination to surface waters, machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands a minimum of 100 feet from waters of the state including wetlands, unless otherwise approved by Ecology.
14. Wash water containing oil, grease, or other hazardous materials resulting from washing of equipment or working area shall not be discharged into state waters. The Applicant shall establish a separate, contained area for washing down vehicles and equipment that does not have any possibility of draining to surface waters and/or wetlands.

Barges and Other Work Vessel Operation

15. Barges and other work vessels shall not be anchored in vegetated shallows or allowed to ground-out during construction activities.
16. No return water is allowed to discharge from the barge(s) into waters of the state.
17. The Applicant shall operate the barge(s) and tug in deep water so as to minimize the near-shore propeller wash impacts, such as suspension of nearshore sediments.
18. The Applicant shall have a boat available on site during in- and over-water work activities to manage booms and retrieve any debris that enters the water.

Bank Stabilization

19. Bulkhead removal and replacement shall occur during low tides and be conducted from uplands to the extent practicable.
20. If creosote staining is visible in the bulkhead footprint after removal, the area should be over-excavated and the contaminated material removed to a contained upland area for disposal at an approved facility.
21. Placement of bulkhead material shall be conducted in compliance with water quality standards for turbidity.

Pile Removal

22. All piles will be removed utilizing a vibratory pile driver, operating during high tide.
23. The operator shall “wake up” piling to be removed by vibrating it to break the skin friction bond between piling and sediment. This bond breaking will minimize turbidity in the water column as well as possibly breaking off the piling.

24. Hydraulic jetting devices shall **not** be used to place or remove piles or move sediment away from the piling.
25. Piles removed from the substrate shall be moved immediately from the water onto a barge or onto upland. The pile shall not be shaken, hosed off, left hanging to drip or any other action intended to clean or remove adhering material from the pile prior to its placement on the barge or upland location.
26. During pile removal, containment booms and absorbent sausage booms shall be placed around the perimeter of the in-water work area and upland storage area, if used, to capture wood debris, oil, and other materials from being released into marine waters.
27. All extracted piles and all construction debris, excess sediment, and other solid waste material shall be properly managed and disposed of in an approved upland disposal site so that it cannot cause water quality degradation to state waters.
28. If a barge is used to remove piles, the work surface on the barge deck shall include containment for piles and any liquid or sediment removed during pulling of the piling. Sediments spilled on barge work surfaces shall be contained and disposed of with the pile debris at an approved upland disposal site. Water left in the containment on the barge shall not be discharged into waters of the state.
29. Treated pilings that break during extraction shall be cut three feet below the mudline and capped with clean sand to match the final elevation.

Pile Installation

30. New piling shall be made of galvanized steel, ACZA-treated timber, or concrete. ACZA-treated timber shall comply with the Western Wood Preservers Institute BMPs.
31. New piling shall be installed using a vibratory hammer and may be proofed with an impact hammer if necessary for full installation.
32. If an impact hammer is used for pile proofing, a suitable noise-attenuation device (such as a bubble curtain or wood block) shall be used to protect marine life.

Concrete Work

31. Spill protection measures shall be in place prior to any concrete delivery over water. All forms for any concrete structures shall be completely sealed off to prevent the possibility of fresh concrete entering waters of the state.
32. Concrete delivery systems shall be inspected daily to prevent any discharges of concrete and/or slurry water into waters of the state.

33. Concrete process water shall not enter waters of the state. Any concrete process/contact water discharged from a confined area with curing concrete shall be routed to upland areas to be treated and disposed of properly with no possible entry to waters of the state.

F. Emergency/Contingency Measures

1. The Applicant shall develop and implement a spill prevention and containment plan for this project.
2. The Applicant shall have adequate and appropriate spill response and cleanup materials available on site at all times during construction to respond to release of petroleum products or any other material into waters of the state.
3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks and shall be maintained and stored properly to prevent spills into state waters.
4. Work causing distressed or dying fish and discharges of oil, fuel, or chemicals into state waters or onto land with a potential for entry into state waters is prohibited. If such work, conditions, or discharges occur, the Applicant shall notify Ecology's Federal Permit Manager per condition B.1 and immediately take the following actions:
 - a. Cease operations at the location of the non-compliance.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and prevent further environmental damage.
 - c. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
 - d. Immediately notify Ecology's Regional Spill Response Office 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.
 - e. Immediately notify the National Response Center at 1-800-424-8802, for actual spills to water only.
5. Notify Ecology's Regional Spill Response Office immediately if chemical containers (e.g. drums) are discovered on site or any conditions are present indicating disposal or burial of chemicals on site that may impact surface water or ground water.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. 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 both of the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form by mail or in person. (See addresses below.) E-mail is not accepted.

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

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW, Suite 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

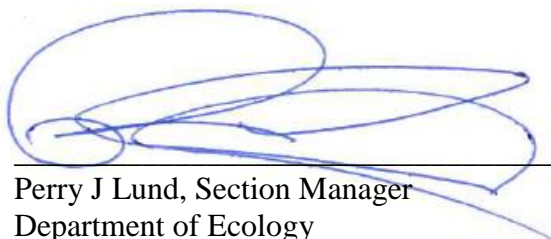
Please direct all questions about this Order to:

Lori Kingsbury
Department of Ecology
Southwest Regional Office, SEA Program
P.O. Box 47775
Olympia, WA 98504-7775
Lori.kingsbury@ecy.wa.gov

MORE INFORMATION

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



Perry J Lund, Section Manager
Department of Ecology
Shorelands and Environmental Assistance Program
Southwest Regional Office

May 4, 2020
Date

Attachment A
Statement of Understanding
Water Quality Certification Conditions

Olympia Oyster Company Shellfish Processing Plant
Olympia Oyster Company
Water Quality Certification Order No. **18126**
and
Corps Reference No. **NWS-2018-570**

I, _____, state that I will be involved as an agent or contractor for Olympia Oyster Company in the construction activities authorized by Order No. **18126** at the Olympia Oyster Company Shellfish Processing Plant located at 1042 SE Bloomfield Road, Shelton, Mason County, Washington. I further state that I have read and understand the relevant conditions of Washington Department of Ecology Water Quality Certification Order No. **18126** and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

Phone

Company