

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER # 7536</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference No. NWS-2021-604</b>
<b>CERTIFICATION TO</b>	)	<b>(Regional General Permit 4)</b>
<b>U.S. Army Corps of Engineers</b>	)	Regional General Permit for maintenance,
<b>Seattle District</b>	)	modification, construction, and retention of
pursuant to 33 U.S.C. 1341 (FWPCA	)	overwater structures in southern Lake Chelan,
§ 401), RCW 90.48.120, RCW 90.48.260	)	located in Chelan County, Washington.
and Chapter 173-201A WAC	)	

U.S. Army Corps of Engineers  
 Attn: Jenae Churchill  
 Seattle District  
 Regulatory Branch, CENWS-ODR  
 PO Box 3755  
 Seattle, WA 98124-3755

On May 11, 2021, the U.S. Army Corps of Engineers Seattle District (Corps) submitted a pre-filing meeting request to the Department of Ecology (Ecology). Then the Corps on June 14, 2021, submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Regional General Permit # 4 (RGP #4) South Lake Chelan located in Chelan County, Washington. On June 14, 2021 the Corps submitted additional information and Ecology considered the Request valid on this date. On June 24, 2021, the Corps informed Ecology that the deadline for making a decision on this project would be October 12, 2021. The U.S. Army Corps of Engineers (Corps) issued a joint public notice for the project on June 24, 2021

The purpose of the Regional General Permit is to authorize the maintenance, modification, construction, and retention of overwater structures in southern Lake Chelan for the purpose of water access and recreation. Overwater structures for this RGP are defined as piers, ramps, floats, watercraft lifts, seasonal swim floats, and their associated structures. Associated structures include concrete footings, caps, float stops/stub piles, ladders, handrails, swim steps davits (suspended watercraft lifts), watercraft grids or lifts, cleats, fenders, and lighting. This RGP # 4 is to only authorize the installation, construction, or retention of one pier/ramp/float structure and one seasonal swim float per property.

Regional General Permit # 4 is applicable in southern Lake Chelan; “southern Lake Chelan” is defined as the portion of Lake Chelan downlake (south) of a line drawn between Limekiln Point (-120.2716; 48.0139) and Box Canyon Creek (-120.3324; 48.0145).

**AUTHORITIES**

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed the WQC request 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.
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.
4. Conformance with Washington’s prohibition on discharges that cause or tend to cause pollution of waters of the state of Washington. RCW 90.48.080.
5. The project proponent of the project authorized is responsible for obtaining all other permits, licenses, and certifications that may be required by federal, state, local or tribal authorities.

**WATER QUALITY CERTIFICATION CONDITIONS**

With this Water Quality Certification (WQC) Order, Ecology is granting with conditions, the Corps’ request for a Section 401 Water Quality Certification for the Clean Water Act for the Regional General Permit # 4 (RGP #4) South Lake Chelan located in Chelan County, Washington. Ecology has determined that the proposed discharges will comply with all applicable state water quality requirements, provided the project is conducted in accordance with the Section 401 Water Quality Certification request that Ecology received on June 14, 2021, the supporting documents referenced in Table 1 below, **and the conditions of this WQC Order.**

Specific condition justifications and citations required by 40 CFR 121.7(d)(1) are provided below each condition in *italic text*.

**Table 1.** Supporting Documents

<b>Date Received</b>	<b>Document Type</b>	<b>Title &amp; Date</b>	<b>Author</b>
May 11, 2021	Pre-filling Meeting Request	Pre-filling Meeting Request Form (dated May 11, 2021)	Jenae Churchill/U.S. Army Corps of Engineers
June 14, 2021	Request for Clean Water Act Section 401 Water Quality	Request for Clean Water Act Section 401 Water Quality Certification (dated June 14, 2021)	Jenae Churchill/U.S. Army Corps of Engineers

	Certification		
May 11, 2021	RGP 4 Intro Text	Department of Army Regional General Permit 4 (dated NA)	U.S. Army Corps of Engineers
May 11, 2021	RGP 4 General Conditions	General Conditions for Regional General Permit 4 (dated NA)	U.S. Army Corps of Engineers
May 11, 2021	RGP 4 Appendix A	Appendix A, Regional General Permit 4, List of Requirements (dated NA)	U.S. Army Corps of Engineers
May 11, 2021	RGP Appendix B-C	Appendix B, Map of Southern Lake Chelan and Appendix C, Plant List and Example Planting Plan (dated NA)	U.S. Army Corps of Engineers
May 11, 2021	RGP 4 Appendix D-E		U.S. Army Corps of Engineers
May 11, 2021	Proof of Pre-Filling Meeting Request	Appendix D, Status/As Built Report for Mitigation Work Completion for RGP 4 and Appendix E, Mitigation Planting Monitoring Report for RGP 4, (dated NA)	U.S. Army Corps of Engineers
July 22, 2021	Consolidated JPN Public Comments	Consolidated JPN Comments for Regional General Permit 4 (1352 89) (dated NA)	U.S. Army Corps of Engineers

Issuance of this Section 401 Water Quality Certification for this proposal does not authorize the Corps 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 Corps from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

Specific condition justifications and citations required by 40 CFR 121.7(d)(1) are provided below each condition in *italic text*.

**A. General Conditions**

Clean Water Act (CWA) Section 401 certification is granted with conditions to the Corps. Ecology has determined that any discharge from the proposed project will comply with water quality requirements, as defined by 40 CFR 121.1(n), subject to the following conditions pursuant to Section 33 USC §1341(d). Additionally, the following conditions will be incorporated into the Corps permit and strictly adhered to by the Corps. This WQC 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 WQC Order.

Specific condition justifications and citations required by 40 CFR 121.7(d)(1) are provided below each condition in *italic text*.

1. In this WQC Order, the term “Project Proponent” shall mean the prospective permittee(s), and its agents, assignees, and contractors seeking authorization under RGP 4.
  - *Justification - Ecology needs to identify that conditions of this WQC Order apply to anyone conducting work on behalf of the Project Proponent to ensure compliance with the water quality standards and other applicable state laws.*
  - *Citation - 40 CFR 121.1(j), Chapter 90.48 RCW, Chapter 90.48.080 RCW, Chapter 90.48.120 RCW, Chapter 90.48.260 RCW, Chapter 173-200 WAC, Chapter 173-201A WAC, and Chapter 173-225-010 WAC.*
  
2. Work authorized by this WQC Order is limited to the work described in Regional General Permit (RGP) 4 received by Ecology on June 14, 2021, unless otherwise authorized by Ecology.
  - *Justification - Ecology has the authority to prevent and control pollution of state waters. By authorizing a discharge into a water of the state, through a WQC, Ecology is certifying the project as proposed will not negatively impact our state’s water quality. Therefore, it is imperative the project is conducted as it was presented during the review process. Any deviations from information within the WQC Request package and this WQC Order must be disclosed prior to the initiation of the planned work.*
  - *Citation - 40 CFR 121.5, Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.120 RCW, Chapter 90.48.260 RCW, Chapter 173-200 WAC, Chapter 173-201A WAC, Chapter 173-204 WAC, and Chapter 173-225-010 WAC.*
  
3. This WQC 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 WQC Order.
  - *Justification - Ecology has the authority to prevent and control pollution of state waters, and to protect designated uses. By authorizing a discharge into a water of the state, through a water quality certification, we are certifying the project as proposed will not negatively impact our state’s water quality and will comply with the state’s water quality requirements. Therefore, it is imperative the project is conducted as it was presented during the review process, and as conditioned herein.*
  - *Citation - Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 173-200 WAC, Chapter 173-201A WAC, Chapter 173-201A-300(2)(e)(i) WAC, Chapter 173-201A-310 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

4. Nothing in this WQC Order waives Ecology's discretionary authority to issue additional Orders if Ecology determines that further actions are necessary to implement the water quality laws of the state.
  - *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.*
  - *Citation - Chapter 90.48.120 RCW, Chapter 173-201A WAC, and Chapter 173-225-010 WAC.*

## **B. Timing**

1. This Order will expire five (5) years from the date of issuance of the Corps permit.
  - *Justification - Certifications are required for any license or permit that authorizes an activity that may result in a discharge. Ecology needs to be able to specify how long the WQC Order will be in effect.*
  - *Citation - Chapter 90.48 RCW, Chapter 173-201A, and Chapter 173-225-010 WAC.*

## **C. Water Quality Monitoring & Criteria**

1. This Order does not authorize the Applicant to exceed applicable water quality standards beyond the limits established in WAC 173-201A- 200(1)(e)(i).
  - *Justification - This condition provides citation to the appropriate water quality standard criteria to protect surface waters of the state. 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, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300-330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

## **D. 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.
  - *Justification - Disturbed areas without appropriate BMP's and construction methods can discharge excess sediment to waters of the state and degrade water quality. 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, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300-330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

2. All equipment being used below the ordinary high water mark shall utilize biodegradable hydraulic fluid.
  - *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.*
  - *Citation - Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300-330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
3. Equipment used for this project shall be free of external petroleum-based products while used around the waters of the state, including wetlands. Accumulation of soils or debris shall be removed from the drive mechanisms (wheels, tires, tracks, etc.) and the undercarriage of equipment prior to its use around waters of the state, including wetlands.
  - *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.*
  - *Citation - Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 173-201A WAC, Chapter 173-201A-300-330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
4. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.
  - *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.*
  - *Citation - Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300-330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
5. 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.
  - *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.*
  - *Citation - Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 173-200, Chapter 173-201A WAC, Chapter 173-201A-300-330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
6. Wash water containing oils, grease, or other hazardous materials resulting from washing of equipment or working areas shall not be discharged into state waters. The Applicant shall set up a designated area for washing down equipment.
  - *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.*

- *Citation - Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 173-201A WAC, Chapter 173-201A-300-330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

#### **E. Emergency/Contingency Measures**

1. The Project Proponent shall develop and implement a spill prevention and containment plan for this project.
  - *Justification - Ecology must ensure that the Project Proponent has a plan to prevent pollution from entering waterways. 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, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 90.56.280 RCW, Chapter 173-201A WAC, Chapter 173-201A-300-330 WAC, Chapter 173-204-120 WAC, Chapter 173-225-010 WAC, and Chapter 173-303-145 WAC.*
2. The Project Proponent shall have adequate and appropriate spill response and cleanup materials available on site to respond to any release of petroleum products or any other material into waters of the state.
  - *Justification - Ecology must have assurance that the Project Proponent has the material readily available in WQC Order to address any spills that might occur to protect waters of the state. 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, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 90.56.280 RCW, Chapter 173-201A WAC, Chapter 173-201A-300-330 WAC, Chapter 173-204-120 WAC, Chapter 173-225-010 WAC, and Chapter 173-303-145 WAC.*
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.
  - *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.*
  - *Citation - Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 90.56.280 RCW, Chapter 173-201A WAC, Chapter 173-201A-300-330 WAC, Chapter 173-204-120 WAC, Chapter 173-225-010 WAC, and Chapter 173-303-145 WAC.*
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 Project Proponent shall notify Ecology's Federal Permit Manager per condition A2 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.

- *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, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 90.56.280 RCW, Chapter 173-201A WAC, Chapter 173-201A-300-330 WAC, Chapter 173-204-120 WAC, Chapter 173-225-010 WAC, and Chapter 173-303-145 WAC.*

5. Notify Ecology's Regional Spill Response Office immediately if chemical containers (e.g. drums) are discovered on-site or any conditions present indicating disposal or burial of chemicals on-site that may impact surface water or ground water.

- *Justification - Oil and hazardous materials spills cause environmental damage. 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, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 90.56.280 RCW, Chapter 173-201A WAC, Chapter 173-201A-300-330 WAC, Chapter 173-204-120 WAC, Chapter 173-225-010 WAC, and Chapter 173-303-145 WAC.*

## **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
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel Road SW STE 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

#### CONTACT INFORMATION

Please direct all questions about this Order to:

Lori White  
Department of Ecology  
Central Regional Office  
1250 W Alder Street  
Union Gap, WA 98903

(509) 575-2616  
[lori.white@ecy.wa.gov](mailto:lori.white@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**

Dated this 28th day of September, 2021 at the Department of Ecology, Union Gap, Washington



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Gary Graff, PWS  
Regional Section Manager  
Shorelands and Environmental Assistance Program