



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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April 8, 2021

Susan Poulsom, Manager  
NPDES Permits Unit  
United States Environmental Protection Agency - Region 10  
1200 Sixth Avenue, Suite 155, OWW  
Seattle, WA 98101

**RE: Clean Water Act Section 401 Certification for  
EPA National Pollutant Discharge Elimination System  
Permit No. WAG132000**

Dear Susan Poulsom:

This letter is in response to the U.S. Environmental Protection Agency letter, dated February 9, 2021, requesting Washington State Department of Ecology (Ecology) provide a Clean Water Act Section 401 Certification for the Final National Pollutant Discharge Elimination System (NPDES) Permit No. (WAG132000) for General Permit for Tribal Enhancement and Federal Research Marine Net Pen Facilities within Puget Sound

With this Section 401 Water Quality Certification, Ecology certifies NPDES Permit No. WAG132000 (Permit) with conditions as found in Order No. 19753. The Enclosed Order may be appealed by following the procedures described in the Order.

If you have any questions or would like to discuss these matters further, please contact Laurie Niewolny, at 360-584-8852 or [laurie.niewolny@ecy.wa.gov](mailto:laurie.niewolny@ecy.wa.gov).

Sincerely,

A handwritten signature in black ink, reading "Jeff Killelea".

Jeff Killelea  
Program Development Services Section Manager

Enclosure

cc: Martin Merz, Permit Writer, Region 10 EPA  
Laurie Niewolny, Technical Lead, Aquaculture Specialist and NPDES Permit  
Coordinator, WQ Program  
Angela Zeigenfuse, 401 Certification Coordinator, WQ Program  
Vincent McGowan, P.E., Water Quality Program Manager, WQ Program  
Loree' Randall, 401 Policy Lead, SEA Program  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov) – (Aquatics # 139760)

By Certified Mail: 9489 0090 0027 6072 1470 14

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER # 19753</b>
<b>WATER QUALITY</b>	)	401 Water Quality Certification for the EPA Net
<b>CERTIFICATION TO</b>	)	Pens General Permit allowing discharge from
<b>U.S. Environmental Protection Agency</b>	)	tribal enhancement and research net pen facilities
pursuant to 33 U.S.C. 1341 (FWPCA §	)	in the Puget Sound. (NPDES Permit No.
401), 40 CFR Part 121, RCW 90.48.120,	)	WAG132000)
RCW 90.48.260 and chapter 173-201A	)	
WAC	)	

TO: UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION 10  
 ATTN: Susan Poulsom  
 1200 Sixth Ave, Suite 155, OWW  
 SEATTLE, WA 98101

On February 9, 2021, the U.S. Environmental Protection Agency (EPA) requested a Section 401 Water Quality Certification for the NPDES general permit authorizing discharges to a water of the state (defined in chapter 90.48 RCW) from tribal enhancement and federal research marine net pen facilities within Puget Sound.

The NPDES General Permit for tribal enhancement net pen facilities first went into effect on November 1, 2015 and expired on October 31, 2020. The proposed General Permit will authorize discharges from tribal enhancement marine net pen facilities raising native salmonids (enhancement facilities) and federal research marine net pen facilities raising native finfish (research facilities) within Puget Sound in Washington State. Most facilities eligible for coverage are tribal enhancement facilities. This General Permit reissuance involves an expansion from the previous general permit in the types of facilities covered (federal research facilities in addition to tribal enhancement facilities) and the size of facilities covered (up to 200,000 pounds annual production for enhancement facilities instead of 100,000 pounds).

EPA defines concentrated aquatic animal production facilities as point sources subject to the NPDES permit program. See 40 CFR §122.24. The regulations further define such a facility as a hatchery, fish farm, or other facility that contains, grows, or holds:

Cold water fish species or other cold-water aquatic animals in ponds, raceways, or other similar structures that discharge at least thirty days per year, but does not include:

1. Facilities that produce less than 20,000 harvest weight pounds of aquatic animals per year, and
2. Facilities that feed less than 5,000 pounds of food during the calendar month of maximum feeding.

Net pens are typically suspended from a floating structure and anchored to the sea bottom, while allowing water movement with tides and currents. In such systems, pollutants of concern are uneaten feed and feces that add solids, biochemical oxygen demand (BOD<sub>5</sub>), nutrients, and drugs or other chemicals that discharge to the water column. Water quality standards are met through narrative criteria focused on pollution prevention using best management practices and source controls.

There are some new permit conditions that apply to all facilities, and other permit conditions that are new that specifically apply to research facilities. EPA collaborated with Ecology to identify what these new conditions would entail relative to state issued individual NPDES permits for Cooke Aquaculture's commercial net pen operations and our state standards.

We received a comment during the public comment period of the 401 certification of this General Permit and during the public comment period for a modification of the state issued Cooke Aquaculture net pen NPDES permits in Fall 2020 with a concern the permits were not adequately preventing discharge of fish feed that can be a potential source of polychlorinated biphenyls (PCBs). While Ecology did not address the comment during the modification of Cooke's permits because it was outside of the scope of the modification, the comment and concern was noted for consideration during the reissuance of Cooke's permits in the future. Fish Feed PCB Reduction actions are identified as technology based narrative limits in both EPA's and Ecology issued NPDES General Permits for upland, freshwater fish hatcheries. Ecology finds the following condition is necessary to be in the EPA General Permit for tribal enhancement and federal research net pen facilities to meet the State's water quality standards and requirements.

In accordance with 40 CFR 124.53(e)(3), Ecology has determined that no condition in the draft NPDES permit may be made less stringent without violating water quality standards in Washington State law. This Order and 401 Certification (Certification) imposes additional conditions, beyond the conditions of the draft NPDES permit, on the Project Proponents.

**AUTHORITIES:**

In exercising authority under 33 U.S.C. § 1341, 40 CFR Part 121, RCW 90.48.120, and RCW 90.48.260, Ecology has examined EPA's request for CWA 401 certification of the draft permit 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.
4. Conformance with Washington's prohibition on discharges that cause or tend to cause pollution of waters of the state of Washington as required by RCW 90.48.080.

**WATER QUALITY CERTIFICATION CONDITIONS:**

With this Certification and through issuance of this Order, Ecology certifies that the discharge as proposed and conditioned by this Certification will not violate applicable water quality standards or other appropriate requirements of State law. In view of the foregoing and in accordance with 33 U.S.C. §1341, 40 CFR Part 121, RCW 90.48.120, RCW 90.48.260, chapter 173-200 WAC, and chapter 173-201A WAC, water quality certification is granted to the Project Proponent subject to the conditions within this Order and NPDES Permit No. WAG132000.

Certification of the proposed draft permits does not authorize the Project Proponent to exceed applicable state surface water quality standards (chapter 173-201A WAC), ground water standards (chapter 173-200 WAC) or sediment quality standards (chapter 173-204 WAC), standards in the EPA's Revision of certain Federal water quality criteria applicable to Washington (40 CFR 131.45), and other appropriate requirements of State law.

**A. General Conditions**

1. For purposes of this Order, the term "Project Proponents" shall mean those that are seeking coverage under this general permit, and its agents, assignees and contractors.
2. The Federal Agency shall mean the US Environmental Protection Agency (EPA). The Federal Agency shall enforce the permit and ensure that the Project Proponents complies with the conditions of the permits at all times.
3. Failure of any person or entity to comply with this Certification may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Certification.

**B. Water Quality**

1. The Certification conditions within this Order must be incorporated into EPA's final NPDES permit in order to comply with State water quality standards. Pursuant to 40 CFR 121.10(a), all certification conditions herein that satisfy the requirements of 40 CFR 121.7(d) must be incorporated into the permit. Pursuant to 40 CFR 121.10(b), the permit must clearly identify all certification conditions.
2. This Certification does not authorize exceedances of water quality standards established in chapter 173-201A WAC. Authorizing exceedances of water quality standards is inconsistent with compliance.
3. The historic use, worldwide distribution, and persistent nature of polychlorinated biphenyls (PCBs) have led to bioaccumulation of these contaminants in fish feed. Fish food contains PCBs in varying concentrations. Certain foods and animal feeds, principally those of animal and marine origin, contain PCBs as unavoidable, environmental contaminants. To date, there are no zero PCB options in fish feed, therefore source control is the best option to comply with the State antidegradation policy (WAC 173-201A-300), and limit the discharge of polluting matter in water (RCW 90.48.080 and RCW 90.48.520).

In accordance with RCW 90.48.080, RCW 90.48.520, and WAC 173-201A-300, EPA's General Permit must include a condition to minimize polychlorinated biphenyls (PCBs) in the fish feed from being discharged through use of all known, available, and reasonable methods of prevention, control, and treatment (AKART). The following technology based narrative limit must be implemented:

Fish Feed PCB Reduction: All tribal enhancement net pen facilities must implement the following to reduce the content of PCBs in fish feed and from the feeding activity. Federal research facilities must also implement reduction if it is suspected the ingredients used to formulate feed could contain PCBs.

- a) Purchasing procedures that give preference for fish feed or ingredients that contains the lowest amount of PCBs that is economically and practically feasible.
- b) Feeding practices that minimize the discharge of unconsumed fish feed.

**C. Timing Requirements**

1. This Certification is valid until the expiration date including any administrative extension or termination date of NPDES Permit No. WAG132000 (40 CFR § 122.46).

**D. Notification Requirements**

1. The Federal Agency shall enforce and the Project Proponents must comply with all the reporting and notification conditions of the NPDES permit in order to comply with this Order and the certification conditions herein (40 CFR § 121.11).

**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 all 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 RD 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:

Laurie Niewolny  
Water Quality Program  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98503-7600  
360-584-8852  
laurie.niewolny@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://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**  
<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**  
<http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Chapter 90.48 RCW – Water Pollution Control**  
<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>
- **Chapter 173.204 Washington Administrative Code (WAC) Sediment Management Standards**  
<https://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**  
<https://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**  
<https://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>

## SIGNATURE



April 8, 2021

Jeff Killelea  
Program Development Services Section Manager  
Department of Ecology  
State of Washington