



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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June 9, 2021

Susan Poulson, Manager
NPDES Permitting Section
1200 Sixth Ave
Suite 155, 19-C04
Seattle, WA 98101-2123

RE: Ecology's Concurrence on EPA's National Consistency Determination for proposal of a general National Pollutant Discharge Elimination System (NPDES) permit for discharges of pesticides to waters of the U.S.

Dear Susan Poulson:

The Washington Department of Ecology (Ecology) received the Environmental Protection Agency's (EPA) National Consistency Determination for the *Pesticide General Permit (PGP) for Discharges from the Application of Pesticides* on March 26, 2021. EPA acknowledged Ecology's assertion of the 15-day extension for its decision to June 9, 2021.

The NPDES Permit applies to federal facilities in Washington and Indian Country within Washington where there is no EPA-approved permitting program. The permit provides increased protection to coastal waters by imposing enforceable NPDES permit limits on those discharges. The permit establishes technology-based effluent limitations based upon Clean Water Act sections 301(b)(2)(A) and 301(b)(2)(E), ensuring that pesticide discharges will comply with applicable State water quality standards under CWA section 303.

As administrator of Washington's Coastal Zone Management Program, Ecology concurs with EPA's proposal that it meets the applicable enforceable policy of Washington's Coastal Zone Management Program – the State Water Pollution Control Act and Water Quality regulations – by receiving Ecology's Section 401 Water Quality Certification on May 25, 2021.

For future National Consistency Determinations that EPA submits to Ecology, we have several observations relating to the federal requirements. EPA chose to submit its consistency determination under the provisions relating to "national consistency determinations" at 15 CFR 930.36 (e) yet failed to follow the minimum requirements of that sub-section. According to the

federal regulations, a federal agency may provide states with consistency determinations for federal agency activities that are national in scope that affect any coastal use or resource of more than one state. Many states share common coastal management issues and have similar enforceable policies. The applicable CFR states, “the federal agency's national consistency determination should, at a minimum, address the common denominator of these policies, *i.e.*, the common coastal effects and management issues, and thereby address different States' policies with one discussion and determination.”

EPA’s national consistency determination addresses no common enforceable policies. A search of the 90+ page NPDES Permit and associated materials revealed no discussion, or even a mention, of enforceable policies of any state. In the future, EPA should consider submitting a more robust discussion following the federal regulations so that Ecology will not need to request additional information, which could stall our decision.

Should you have questions or comments, please contact Therese Swanson, at (360) 584-3744 or tswa461@ecy.wa.gov.

YOUR RIGHT TO APPEAL

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

- File your appeal and a copy of this decision 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 decision on Ecology in paper form - by mail or in person (addresses below). E-mail is not accepted.
- 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 RD SW STE 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903
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Sincerely,



Brenden McFarland, Section Manager
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program

Attachment

E-CC: Bilin Basu, EPA
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