



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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August 10, 2021

Susan Poulsom, P.E., 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. WA0025666 – Lummi Gooseberry Point Wastewater Treatment Plant**

Dear Susan Poulsom:

This letter is in response to the US Environmental Protection Agency's letter, dated June 16, 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. WA0025666 for Lummi Gooseberry Point Wastewater Treatment Plant.

With this Section 401 Water Quality Certification, Ecology certifies NPDES Permit No. WA0025666 (Permit) as found in Order No. 20327. The Enclosed Order may be appealed by following the procedures described in the Order. No additional conditions are imposed by this order.

If you have any questions or would like to discuss these matters further, please contact Kevin Leung, at 206-594-0168 or kevin.leung@ecy.wa.gov.

Sincerely,

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

Jeff Killelea, Manager
Program Development Services Section
Water Quality Program
Department of Ecology

Enclosure: Administrative Order # 20327

cc: Sally Goodman, Permit Writer, Region 10 EPA
Kevin Leung, Permit Manager, 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 – Aquatics ID # 140558

By Certified Mail: 9489 0090 0027 6072 1471 99

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF GRANTING A)	ADMINISTRATIVE ORDER
WATER QUALITY CERTIFICATION TO)	DOCKET# 20327
U.S. Environmental Protection Agency)	Lummi Gooseberry Point Wastewater
pursuant to 33 U.S.C. 1341 (FWPCA § 401), 40)	Treatment Plant (NPDES Permit No.
CFR Part 121, RCW 90.48.120, RCW 90.48.260)	WA0025666)
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 June 17, 2021, the US Environmental Protection Agency (EPA) submitted a request for a Section 401 Water Quality Certification (WQC) for the National Pollutant Discharge Elimination System (NPDES) permit authorizing discharges to a water of the state (defined in chapter 90.48 RCW) from the Lummi Gooseberry Point Wastewater Treatment Plant (WWTP). Prior to submitting the WQC request, the EPA submitted a pre-filing meeting request on May 5, 2021. No pre-filing meeting was held. On June 29, 2021, the Washington State Department of Ecology (Ecology) issued a public notice pursuant to the provisions of chapter 173-225 WAC.

On August 11, 2016, the Lummi Tribal Sewer and Water District submitted an NPDES permit application to the EPA requesting permit renewal for the permit with an expiration date of November 30, 2016. In response to the Lummi Tribal Sewer and Water District application, EPA drafted a renewed NPDES permit to authorize discharges from the Lummi Gooseberry Point WWTP into waters of the United States. The discharges consist of municipal (domestic) wastewater treated and disinfected effluent to Hale Passage, Puget Sound through Outfall 001. Once finalized, the 2021 Lummi Gooseberry Point WWTP NPDES permit will replace the 2011 permit already in place.

The Lummi Gooseberry Point WWTP serves the residential areas of the Lummi Tribe. The NPDES permit authorizes discharges to the Hale Passage, Puget Sound, a water of the United States. The facility is located at 2156 Lummi View Drive, Bellingham, WA 98226.

EPA may not issue an NPDES permit to conduct activity that may result in any discharges into waters of Washington State until Ecology has granted certification under Clean Water Act (CWA) section 401, or has waived its right to certify. 33 U.S.C. 1341 (a)(1); 40 C.F.R. 124.53(a).

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.

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 the 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 comply with 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, Lummi Gooseberry Point WWTP (Permit No. WA0025666).

Certification of the proposed draft permit 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 Requirements

1. For purposes of this Order, the term "Project Proponent" shall mean those that are seeking coverage under this permit, and its agents, assignees and contractors.
2. The Federal Agency shall mean the US Environmental Protection Agency. The Federal Agency shall enforce the permit and ensure that the Project Proponent 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. Timing Requirements

1. This Certification is valid until the expiration date including any administrative extension or termination date of NPDES Permit, Lummi Gooseberry Point WWTP (Permit No. WA0025666) (40 CFR § 122.46).

C. Notification Requirements

1. The Federal Agency shall enforce and the Project Proponent 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
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

CONTACT INFORMATION

Please direct all questions about this Order to:

Kevin Leung
Department of Ecology
P.O. Box 330316
Shoreline, WA 98133-9716

Phone: 206-594-0168
Email: kevin.leung@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



Jeff Killelea, Manager
Program Development Services Section
Water Quality Program

August 10, 2021
Date