



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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September 14, 2021

Susan Poulosom, 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 Construction General Permit**

Dear Susan Poulosom:

This letter is in response to the US Environmental Protection Agency's letter, dated July 15, 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) Construction General Permit for authorized discharges associated with construction activity.

With this Section 401 Water Quality Certification, Ecology certifies NPDES Construction General Permit (Permit) with conditions as found in Order No. 20455. 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 Noel Tamboer, at (360) 701-6171 or [noel.tamboer@ecy.wa.gov](mailto:noel.tamboer@ecy.wa.gov).

Sincerely,

Jeff Killelea, Manager  
Program Development Services Section  
Water Quality Program

**Enclosure:** Administrative Order # 20455

**By Certified Mail # 9489 0090 0027 6072 1474 34**

cc: Susan Poulosom, NPDES Permits Unit Manager, Region 10 EPA  
Margaret McCauley, Permit Writer, Region 10 EPA  
Noel Tamboer, Construction Stormwater NPDES Permit Writer, WQ Program  
Angela Zeigenfuse, 401 Certification Coordinator, WQ Program  
Vincent McGowan, P.E., Water Quality Program Manager, WQ Program  
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STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

|   |   |   |
|---|---|---|
| <b>IN THE MATTER OF GRANTING A</b>          | ) | <b>ADMINISTRATIVE ORDER</b>                 |
| <b>WATER QUALITY</b>                        | ) | <b>DOCKET # 20455</b>                       |
| <b>CERTIFICATION TO</b>                     | ) | 401 Water Quality Certification for the EPA |
| <b>U.S. Environmental Protection Agency</b> | ) | 2022 NPDES Construction General Permit      |
| pursuant to 33 U.S.C. 1341 (FWPCA §         | ) |   |
| 401), 40 CFR Part 121, RCW 90.48.120,       | ) |   |
| 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 July 16, 2021, the US Environmental Protection Agency (EPA) requested a Section 401 Water Quality Certification for the 2022 NPDES Construction General Permit authorizing stormwater discharges to a water of the state (defined in chapter 90.48 RCW) from construction activity by federal operators located within the State of Washington.

EPA's Construction General Permit (CGP) for point source discharges from construction activity went into effect on February 16, 2017 and was modified on June 27, 2019. The current CGP will expire on February 16, 2022. The draft 2022 CGP, proposed under the Clean Water Act's NPDES program, contains permit conditions for stormwater and authorized non-stormwater discharges resulting from construction activity. The draft CGP requirements are largely the same as the modified 2017 CGP requirements. Once finalized, the 2022 CGP will replace the existing 2017 CGP (as modified) currently in place.

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. This Order and 401 Certification (Certification) imposes additional conditions, beyond the conditions of the draft NPDES permit, on the Project Proponent.

**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 Construction General Permit.

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. Water Quality Conditions

1. The Certification conditions within this Order must be incorporated into EPA’s final NPDES permit. Per 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. Per 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.
3. Discharges from construction activity must not cause or contribute to violations of the Water Quality Standards for Surface Water of the State of Washington (chapter 173-201A WAC), Ground Water Quality Standards (chapter 173-200 WAC), Sediment Management Standards (chapter 173-204 WAC), and standards in the EPA’s Revision of certain Federal water quality criteria applicable to Washington (40 CFR 131.45). Discharges that do not comply with these standards are prohibited.

**Citation:** 173-201A WAC, 173-200 WAC, 173-204 WAC, 40 CFR 131.45

**Justification:** Ecology must ensure that the discharges from construction activity do not contribute to exceedances of water quality standards.

4. Prior to discharge of stormwater and non-stormwater to waters of the State, the Permittee must apply all known, available, and reasonable methods of prevention, control, and treatment (AKART). This includes the preparation and implementation of an adequate Stormwater Pollution Prevention Plan (SWPPP), with all appropriate Best Management Practices (BMPs) installed and maintained in accordance with the SWPPP and the terms and conditions of the permit.
  - a. BMPs must be consistent with:
    - i. The *Stormwater Management Manual for Western Washington* (most current approved edition at the time this permit was issued), for sites west of the crest of the Cascade Mountains; or
    - ii. The *Stormwater Management Manual for Eastern Washington* (most current approved edition at the time this permit was issued), for sites east of the crest of the Cascade Mountains; or
    - iii. Revisions to either manual, or other stormwater management guidance documents or manuals which provide equivalent level of pollution prevention, that are approved by Ecology and incorporated into this permit

in accordance with the permit modification requirements of WAC 173-226-230. (For purposes of this section, the stormwater manuals listed in Appendix 10 of the Phase I Municipal Stormwater Permit are approved by Ecology); or

- iv. Documentation in the SWPPP that the BMPs selected provided an equivalent level of pollution prevention, compared to the applicable stormwater management manuals, including:
  - 1. The technical basis for the selection of all stormwater BMPs (scientific, technical studies, and/or modeling) that support the performance claims for the BMPs being selected.
  - 2. An assessment of how the selected BMP will satisfy AKART requirements and the applicable federal technology-based treatment requirements under 40 CFR part 125.3.

The Stormwater Management Manuals for Eastern and Western Washington can be found at: <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Stormwater-permittee-guidance-resources/Stormwater-manuals>.

- b. An adequate SWPPP must include a narrative and drawings. All BMPs must be clearly referenced in the narrative and marked on the drawings. The SWPPP narrative must include documentation to explain and justify the pollution prevention decisions made for the project. Documentation must include:
  - i. Information about existing site conditions (topography, drainage, soils, vegetation, etc.).
  - ii. Potential erosion problem areas.
  - iii. The 13 elements of a SWPPP, including BMPs used to address each element. Unless site conditions render the element unnecessary and the exemption is clearly justified in the SWPPP, the 13 elements are as follows:

1. Preserve Vegetation/Mark Clearing Limits
  2. Establish Construction Access
  3. Control Flow Rates
  4. Install Sediment Controls
  5. Stabilize Soils
  6. Protect Slopes
  7. Protect Drain Inlets
  8. Stabilize Channels and Outlets
  9. Control Pollutants
  10. Control Dewatering
  11. Maintain BMPs
  12. Manage the Project
  13. Protect Low Impact Development (LID) BMPs
- iv. Construction phasing/sequence and general BMP implementation schedule.
  - v. The actions to be taken if BMP performance goals are not achieved—for example, a contingency plan for additional treatment and/or storage of stormwater that would violate the water quality standards if discharged.
  - vi. Engineering calculations for ponds, treatment systems, and any other designed structures. When a treatment system requires engineering calculations, these calculations must be included in the SWPPP. Engineering calculations do not need to be included in the SWPPP for treatment systems that do not require such calculations.

**Citation:** 173-201A WAC, RCW 90.48.010, RCW 90.48.520

**Justification:** Ecology shall require the use of all known available and reasonable methods by industries and others to prevent and control the pollution of the waters of the state of Washington.

5. Discharges of stormwater and authorized non-stormwater must be monitored for turbidity (or transparency) and, in the event of significant concrete work or engineered soils, pH must also be monitored. As applicable based on project specifics, monitoring, benchmarks, and reporting requirements contained in Condition S.4. (pp.10-16) of the Washington State Construction Stormwater General Permit, effective January 1, 2021, shall apply.

6. Discharges to segments of waterbodies listed as impaired by the State of Washington under Section 303(d) of the Clean Water Act for turbidity, fine sediment, phosphorus, or pH must comply with the following numeric effluent limits:

| Parameter identified in 303(d) listing   | Parameter Sampled | Unit | Analytical Method | Numeric Effluent Limit   |
|--|-------------------|------|-------------------|--|
| <ul style="list-style-type: none"><li>• Turbidity</li><li>• Fine Sediment</li><li>• Phosphorus</li></ul> | Turbidity         | NTU  | SM2130            | 25 NTUs at the point where the stormwater is discharged from the site. |
| High pH  | pH                | su   | pH meter          | In the range of 6.5 – 8.5  |

All references and requirements associated with Section 303(d) of the Clean Water Act mean the most current EPA-approved listing of impaired waters that exists on the effective date of the permit, or the date when the operator's complete permit application is received by EPA, whichever is later.

The EPA approved WQ Assessment can be found at: <https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-improvement/Assessment-of-state-waters-303d>

**Citation:** 173-201A WAC, 40 CFR 122.4(i)

**Justification:** Ecology must ensure that the discharges from construction activity do not contribute to exceedances of water quality standards.

7. Discharges to a waterbody that is subject to a Total Maximum Daily Load (TMDL) for turbidity, fine sediment, high pH, or phosphorus must be consistent with the TMDL.
- Where an applicable TMDL sets specific waste load allocations or requirements for discharges covered by this permit, discharges shall be consistent with any specific waste load allocations or requirements established by the applicable TMDL.
  - Where an applicable TMDL has established a general waste load allocation for construction stormwater discharges, but no specific requirements have been identified, compliance with this permit will be assumed to be consistent with the approved TMDL.
  - Where an applicable TMDL has not specified a waste load allocation for construction stormwater discharges, but has not excluded these discharges, compliance with this permit will be assumed to be consistent with the approved TMDL.
  - Where an applicable TMDL specifically precludes or prohibits discharges from construction activity, the operator is not eligible for coverage under this permit.

Applicable TMDL means a TMDL for turbidity, fine sediment, high pH, or phosphorus which has been completed and approved by EPA as of the effective date of the permit, or prior to the date of the operator's complete application for permit coverage is received by EPA, whichever is later.

**Citation:** 40 CFR 122.44(d)(1)(vii)(B)

**Justification:** Ecology is required to ensure that water quality-based effluent limits are consistent with the assumptions and requirements of any available wasteload allocation for the discharge.

8. Discharges to waters of the state from the following activities are prohibited:
- a. Concrete wastewater.
  - b. Wastewater from washout and clean-up of stucco, paint, form release oils, curing compounds and other construction materials.
  - c. Process wastewater as defined by 40 Code of Federal Regulations (CFR) 122.2.
  - d. Slurry materials and waste from shaft drilling, including process wastewater from shaft drilling for construction of building, road, and bridge foundations unless managed to prevent discharge to surface water.
  - e. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance.
  - f. Soaps or solvents used in vehicle and equipment washing.
  - g. Wheel wash wastewater, unless managed to prevent discharge to surface water.
  - h. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, unless managed according to appropriate controls described within the permit.

**Citation:** 40 CFR 450.21, RCW 90.48

**Justification:** Ecology has adopted and added to EPA's list of prohibited discharges, which will help ensure compliance with the state AKART requirements, and prevent violations of the state surface and ground water quality standards, and sediment management standards.

### **C. Timing Requirements**

1. This Certification is valid until the expiration date including any administrative extension or termination date of the NPDES 2022 Construction General Permit. (40 CFR § 122.46)

### **D. Notification Requirements**

1. The Federal Agency shall enforce and the Project Proponent must comply with all the reporting and notification conditions of the NPDES 2022 Construction General 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><br>Attn: Appeals Processing Desk<br>300 Desmond Drive SE<br>Lacey, WA 98503 | <b>Department of Ecology</b><br>Attn: Appeals Processing Desk<br>PO Box 47608<br>Olympia, WA 98504-7608 |
| <b>Pollution Control Hearings Board</b><br>1111 Israel RD SW<br>STE 301<br>Tumwater, WA 98501            | <b>Pollution Control Hearings Board</b><br>PO Box 40903<br>Olympia, WA 98504-0903                       |

## CONTACT INFORMATION

Please direct all questions about this Order to:

Noel Tamboer  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98503-7600  
(360) 701-6171  
[noel.tamboer@ecy.wa.gov](mailto:noel.tamboer@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



9/10/2021

Jeff Killelea, Manager  
Program Development Services Section  
Water Quality Program

DATE