



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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December 5, 2022

Susan Poulsom, Manager
NPDES Permits Unit
United States Environmental Protection Agency - Region 10
1200 Sixth Avenue, Suite 155, OWW
Seattle, WA 98101
Sent by email: poulsom.susan@epa.gov

RE: Clean Water Act Section 401 Certification for EPA National Pollutant Discharge Elimination System Permit for Federal Aquaculture Facilities and Aquaculture Facilities Located in Indian Country within the Boundaries of the State of Washington (#WAG1300000)

Dear Susan Poulsom:

This letter is in response to the US Environmental Protection Agency's letter, dated September 7, 2022, requesting Washington State Department of Ecology (Ecology) provide a Clean Water Act Section 401 Certification for the Draft National Pollutant Discharge Elimination System (NPDES) Permit for Federal Aquaculture Facilities and Aquaculture Facilities Located in Indian Country within the Boundaries of the State of Washington (#WAG1300000).

With this Section 401 Water Quality Certification, Ecology certifies the NPDES Permit for Federal Aquaculture Facilities and Aquaculture Facilities Located in Indian Country within the Boundaries of the State of Washington (#WAG1300000) with general conditions as found in Order No. 21442. 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, Aquaculture Specialist and NPDES Permit Coordinator, at 360-584-8852 or laurie.niewolny@ecy.wa.gov.

Sincerely,

Jeff Killelea, Manager
Program Development Services Section
Water Quality Program

Enclosure: Administrative Order # 21442

By Certified Mail # 9489 0099 0027 6085 8864 29

cc: Martin Merz, Permit Writer, Region 10 EPA
Sally Goodman, NPDES Permitting Section, Region 10 EPA
Laurie Niewolny 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
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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF GRANTING A WATER)	ADMINISTRATIVE ORDER
QUALITY CERTIFICATION TO)	DOCKET #21442
U.S. Environmental Protection Agency)	Permit for Federal Aquaculture Facilities
pursuant to 33 U.S.C. 1341 (FWPCA §)	and Aquaculture Facilities Located in
401), 40 CFR Part 121, RCW 90.48.120,)	Indian Country within the Boundaries of
RCW 90.48.260 and chapter 173-201A)	the State of Washington (#WAG1300000)
WAC)	

TO: United States Environmental Protection Agency
Region 10
Attn: Susan Poulsom
1200 Sixth Ave, Suite 155, OWW
Seattle, WA 98101

On September 7, 2022, the US Environmental Protection Agency (EPA) requested a Section 401 Water Quality Certification for the draft NPDES permit authorizing discharges to a water of the state (defined in chapter 90.48 RCW) from federal aquaculture facilities and aquaculture facilities located in Indian country within the boundaries of the state of Washington.

The NPDES General Permit for Federal Aquaculture Facilities and Aquaculture Facilities Located in Indian Country within the Boundaries of the State of Washington was last issued August 1, 2016, expiring on July 31, 2021, and is currently administratively continued. This General Permit issuance continues to provide permit coverage for concentrated aquatic animal production (CAAP) facilities (refer to 40 CFR §122.24) and for those facilities below the CAAP thresholds. Additionally, coverage has been defined to include facilities that include research and fish passage-related aquaculture activities.

EPA continues to implement our state water quality standards (Chapter 173-201A WAC) using technology-based discharge standards and best management practices based on WAC 173-221A-100. Furthermore, EPA adopted monitoring and best management requirements in impaired waterbodies based on Ecology's NPDES General Permit for Upland Finfish Hatching and Rearing. EPA's permit applies water quality-based effluent limits when wasteload allocations require more stringent discharge limits to protect water quality.

Important changes providing increased water quality protection in the EPA’s draft general permit include the following:

- Increased scope of eligible aquaculture activities requiring coverage to include more types of aquaculture facilities such as research and fish passage facilities; defined aquaculture species to include all aquatic animals.
- Added tiered monitoring based on facility size; added monitoring and action thresholds for non-CAAP facilities.

- Updated water quality based effluent limits and compliance schedules for facilities with wasteload allocation from applicable, approved TMDLs.
- Added monitoring for nutrient parameters if discharging to water bodies with dissolved oxygen impairments.
- Required Annual Reports to be electronically submitted

Ecology conducted a public review and comment period of the state's 401 certification of EPA's draft NPDES General Permit for Federal Aquaculture Facilities and Aquaculture Facilities Located in Indian Country in Washington from September 27 until October 17, 2022.

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 requirements 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;
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control (AKART) pollution of state waters as required by RCW 90.48.010; and
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 that the discharge as proposed 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, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Federal Agency subject to the conditions within this Order and NPDES Permit for Federal Aquaculture Facilities and Aquaculture Facilities Located in Indian Country within the Boundaries of the State of Washington (#WAG1300000).

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 quality 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 the purposes of this Order, the term "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.
 - a. 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.
 - b. Citation - 40 CFR 121.1(j), Chapter 90.48 RCW, RCW 90.48.080, RCW 90.48.120, RCW 90.48.260, Chapter 173-200 WAC, Chapter 173-201A WAC, and WAC 173-225-010.
2. 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.
 - a. 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.
 - b. Citation - 40 CFR 121.1(j), Chapter 90.48 RCW, RCW 90.48.080, RCW 90.48.120, RCW 90.48.260, Chapter 173-200 WAC, Chapter 173-201A WAC, and WAC 173-225-010.

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.
 - a. 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. Ecology has independent state authority to ensure protection of state water quality. Civil penalties and other enforcement actions are the primary means of securing compliance with water quality requirements.
 - b. Citation - Chapter 90.48 RCW, RCW 90.48.030, RCW 90.48.037, RCW 90.48.080, RCW 90.48.120, RCW 90.48.140, RCW 90.48.142, RCW 90.48.144, and WAC 173-225-010.

B. Timing Requirements

1. This Certification is valid until the expiration date including any administrative extension or termination date of the Permit for Federal Aquaculture Facilities and Aquaculture Facilities Located in Indian Country within the Boundaries of the State of Washington (#WAG1300000) (40 CFR § 122.46).
 - a. Justification - Certifications are required for any license or permit that authorizes an activity that may result in a discharge or fill material into waters. This WQC Order is not valid until the Federal agency issues a permit. Additionally, Ecology needs to be able to specify how long the WQC Order will be in effect.
 - b. Citation - Chapter 90.48 RCW, Chapter 173-201A WAC, and WAC 173-225-010.

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 (40 CFR § 121.11).
 - a. Justification - Ecology has independent state authority to ensure protection of state water quality. Ecology must be aware of when a project starts and ends and whether there are any issues. This allows Ecology to evaluate compliance with the state water quality requirements.
 - b. Citation - Chapter 90.48 RCW, RCW 90.48.030, RCW 90.48.120, Chapter 173-201A WAC, WAC 173-201A-300 - 330, Chapter 173-204 WAC, and WAC 173-225-010.

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

Department of Ecology

Attn: Appeals Processing Desk
300 Desmond Drive SE
Lacey, WA 98503

Pollution Control Hearings Board

1111 Israel RD SW
STE 301
Tumwater, WA 98501

Mailing Addresses

Department of Ecology

Attn: Appeals Processing Desk
PO Box 47608
Olympia, WA 98504-7608

Pollution Control Hearings Board

PO Box 40903
Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Order to:

Laurie Niewolny
Department of Ecology
PO 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)¹
- [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)²
- [Chapter 371-08 WAC – Practice And Procedure](http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08)³
- [Chapter 34.05 RCW – Administrative Procedure Act](http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05)⁴
- [Chapter 90.48 RCW – Water Pollution Control](http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48)⁵
- [Chapter 173.204 Washington Administrative Code \(WAC\) Sediment Management Standards](https://apps.leg.wa.gov/WAC/default.aspx?cite=173-204)⁶
- [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)⁷
- [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)⁸

SIGNATURE



Jeff Killelea, Manager
Program Development Services Section
Water Quality Program

¹ <http://www.eluho.wa.gov/Board/PCHB>

² <http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>

³ <http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>

⁴ <http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05>

⁵ <http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>

⁶ <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-204>

⁷ <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-200>

⁸ <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>