



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600, Olympia, WA 98504-7600 • 360-407-6000

April 14, 2023

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 Municipal Stormwater Permit for Joint Base Lewis-McChord (JBLM) (#WAS026638)

Dear Susan Poulsom:

This letter is in response to the US Environmental Protection Agency's letter, dated February 13, 2023, requesting Washington State Department of Ecology (Ecology) provide a Clean Water Act Section 401 Certification for the Draft National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permit for JBLM (#WAS026638), which authorizes discharges from the municipal separate storm sewer system (MS4) to waters of the United States and waters of the state (by certification), including but not limited to: Murray Creek, Clover Creek, Puget Sound, and other associated waters.

With this Section 401 Water Quality Certification Order # 21642, Ecology certifies NPDES Municipal Stormwater Permit for JBLM (#WAS026638) with general conditions. 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 Abbey Stockwell, Municipal Stormwater Senior Planner, at 360-280-2934 or abbey.stockwell@ecy.wa.gov.

Sincerely,

Jeff Killelea, Manager
Program Development Services Section
Water Quality Program

Enclosure: Administrative Order # 21642

By Certified Mail # 9489 0090 0027 6086 4105 93

cc: Bilin Basu, Permit Writer, EPA Region 10
Misha Vakoc, Permit Writer, EPA Region 10
Abbey Stockwell, Municipal Stormwater Senior Planner, 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 # 141755

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF GRANTING A WATER)	ADMINISTRATIVE ORDER #21642
QUALITY CERTIFICATION TO)	Municipal Stormwater Permit for JBLM
U.S. Environmental Protection Agency)	(#WAS026638)
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 February 13, 2023, the US Environmental Protection Agency (EPA) requested a Section 401 Water Quality Certification for the NPDES permit authorizing discharges to a water of the state (defined in chapter 90.48 RCW) from the municipal separate storm sewer system (MS4) at Joint Base Lewis-McChord (JBLM).

On March 29, 2018, the US Army and US Air Force submitted an NPDES Municipal Stormwater Permit application to the EPA requesting permit renewal for the permit with an expiration date of September 2018. In response to the application, EPA administratively extended the permit and has now drafted a renewed NPDES permit to authorize discharges from JBLM's MS4 into waters of the United States. JBLM's MS4 discharges to Murray Creek, Clover Creek, Puget Sound, and other associated waters.

The EPA's permit addresses only the discharges from the MS4 owned or operated by JBLM within the Pierce and Thurston County installation.

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 than State requirements 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 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 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 #21642 and NPDES Municipal Stormwater Permit for JBLM (#WAS026638).

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.

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.

Timing Requirements

1. This Certification is valid until the expiration date including any administrative extension or termination date of the Draft NPDES Municipal Stormwater Permit for JBLM (#WAS026638) (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.

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:

Abbey Stockwell
Department of Ecology
P.O. Box 47600
Olympia, WA 98503-7600
360-280-2934
abbey.stockwell@ecy.wa.gov

MORE INFORMATION

- [Pollution Control Hearings Board Website](#)¹
- [Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board](#)²
- [Chapter 371-08 WAC – Practice and Procedure](#)³
- [Chapter 34.05 RCW – Administrative Procedure Act](#)⁴
- [Chapter 90.48 RCW – Water Pollution Control](#)⁵
- [Chapter 173.204 Washington Administrative Code \(WAC\) Sediment Management Standards](#)⁶
- [Chapter 173-200 WAC Water Quality Standards for Ground Waters of the State of Washington](#)⁷
- [Chapter 173-201A WAC Water Quality Standards for Surface Waters of the State of Washington](#)⁸

SIGNATURE



Jeff Killelea, Manager
Program Development Services Section
Water Quality Program

¹ <https://elaho.wa.gov/content/11>

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>