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DEPARTMENT OF ECOLOGY
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May 7, 2020

Susan Poulsom, 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 Final Certification
EPA National Pollutant Discharge Elimination System
Permit No. WA0026816, USACE – Ice Harbor Lock and Dam

Dear Susan Poulsom:

This letter is in response to the U.S. Environmental Protection Agency's (EPA) letter, dated March 17, 2020, 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 (WA0026816) for **United States Army Corps of Engineers– Ice Harbor Lock and Dam.**

On April 10, 2020, Ecology received notification of EPA's intent to finalize the Temperature TMDL in the Columbia and Lower Snake Rivers after the 60-day certification period ends. Ecology has decided to move forward with the 401 certification process at this time. Conditions are structured so that EPA must incorporate the TMDL's requirements into the permits once the TMDL is approved. Doing so provides regulatory certainty and ensures that steps will be taken to manage sources of heat that contribute to increased river temperatures.

With this Section 401 Water Quality Certification, Ecology certifies NPDES Permit No. WA0026816 (Permit) complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and applicable state laws. **This certification is subject to the conditions contained in the enclosed Order No. 18149**.

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 Eleanor Ott, PE at eleanor.ott@ecy.wa.gov or (360) 407-6433.

Sincerely,

Vincent McGowan, P.E.
Water Quality Program Manager

Enclosure

cc: Eleanor Ott, PE, Ecology
Jennifer Wu, Permit Writer, Region 10 EPA
Loree' Randall, SEA Program, Ecology
Jeff Killelea, Acting Section Manager, Ecology
ecyrefedpermits@ecy.wa.gov

By Certified Mail: 9489 0090 0027 6066 2467 78

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO U.S. Environmental Protection Agency in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	)	**ORDER # 18149** Ice Harbor Lock and Dam located in Burbank, Washington (NPDES Permit No. WA0026816).

TO: UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
ATTN: Susan Poulsom, Manager
1200 Sixth Ave, Suite 155, OWW
SEATTLE, WA 98101

On March 18, 2020, EPA requested a Section 401 Water Quality Certification (Certification) for the National Pollutant Discharge Elimination System (NPDES) permit authorizing discharges to a water of the state (defined in RCW 90.48) from the Ice Harbor federal facility located in Burbank. This Certification imposes additional conditions, beyond the conditions of the NPDES permit, on the Applicant or Permittee.

On April 21, 2015, the U.S. ARMY CORPS OF ENGINEERS (Corps) submitted a NPDES Application to the U.S. Environmental Protection Agency (EPA) requesting a discharge permit for the Ice Harbor Lock and Dam. In response to the Corps application EPA drafted a NPDES permit to cover the discharge of pollutants from the hydroelectric generating facility into waters of Washington State from cooling water, equipment, floor drains, facility maintenance water, and backwash strainer water on cooling water intakes into the Snake River at 2763 Monument Drive, Burbank, Walla Walla County, Washington 99323; Section 24, Township 9N, Range 31E. In addition to the conditions of the NPDES permit, this Certification establishes conditions necessary to protect water quality in river flow, including the dam forebay and pool, spill and generation tailrace water, and flow through fish passage structures that shall be incorporated[1] into the final permit.

The project proposes to monitor discharges from this facility related to cooling water, floor drains, and equipment/facility related water, and backwash strainers on cooling water intake structures. In all, there are 21 outfalls discharging various volumes ranging from 0.17 MGD to 15 MGD. All outfalls discharge to the Snake River.

This Certification is based on the terms and conditions contained in the proposed draft NDPES permit. If EPA issues a final NPDES permit that contains any changes from the draft NPDES permit and does not include all requirements outlined in this Certification, EPA's request for Certification is denied and EPA must request a new Certification for the final NPDES permit.

[1] Foot note with CWA requirement to incorporate WQC conditions.

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. Ecology reserves the right to modify or revoke this Certification if there is no longer reasonable assurance that there will be compliance with 33 U.S.C §§ 1311, 1312, 1313, 1316, 1317, or appropriate conditions of state law due to changes in the operation of the facility, changes in the characteristics of the waters into which discharges occur, changes in water quality criteria applicable to those waters, or changes to applicable effluent limits or other requirements.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has examined EPA's request for CWA Section 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. RCW 90.48.080

WATER QUALITY CERTIFICATION CONDITIONS:

With this Certification and through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and 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 EPA subject to the conditions within this Order and NPDES Permit No. WA0026816.

Certification of EPA proposed final permits does not authorize the Permittee 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 Conditions

1. For purposes of this Order, the term "Applicant" shall mean U.S. Environmental Protection Agency, and its agents, assignees and contractors.

2. For purposes of this Order, the permit "Permittee" shall mean U.S. Army Corps of Engineers – Ice Harbor Lock and Dam

3. The Applicant shall enforce the permit and ensure that the Permittee complies with the conditions of the permits, which shall include the conditions of this Order, at all times.

4. The Permittee must provide access to the facility upon request by Ecology personnel for site inspections, monitoring, and/or necessary data collection, to ensure that conditions of this Order are being met.

5. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental orders, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.

6. In the event of changes or amendments to the state water quality, ground water quality, or sediment standards, or changes in or amendments to the state Water Pollution Control Act (RCW 90.48) or the federal Clean Water Act, Ecology may issue an amendment to this Certification to incorporate any such changes or amendments applicable to this project.

7. 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

1. This Certification does not authorize exceedances of water quality standards established in WAC 173-201A.

2. Water Quality Standards Attainment: (RCW 90.48.080 and WAC 173-201A-510(5)).
    a. In addition to the draft NPDES permit requirements for temperature monitoring at most outfalls, the Permittee must implement temperature control strategies and meet the load allocations in the Columbia and Lower Snake Rivers Temperature Total Maximum Daily Load once issued. EPA must include a re-opener clause, if necessary, in the final permit to incorporate TMDL wasteload allocations. (RCW 90.48.080)

    b. The Permittee must comply with total dissolved gas standards in WAC 173-201A-200(1)(f) or any future modification to the standards thereof.

c. The Permittee must consult with Ecology to develop a water quality attainment plan (WQAP) per the conditions below:
    i. The WQAP shall include all applicable requirements in WAC 173-201A-510(5), *Compliance schedule for Dams*, and must include a detailed strategy for achieving Washington's water quality standards for temperature and associated designated uses, including but not limited to, conditions in fish bypass systems of the dam.
    ii. The Permittee must provide the scope of the WQAP to Ecology for review one year after the permit effective date.
    iii. The Permittee must provide the final WQAP to Ecology for approval within 2 years of the permit effective date.

d. The Permittee must submit a progress report to Ecology for approval in year 6. The Permittee must submit a summary report to Ecology for approval 9 years after the original permit effective date and prior to the end of the ten year dam compliance period.

e. Ecology reserves the right to modify this Certification to incorporate additional compliance schedules for purposes of meeting the WQAP and applicable water quality criteria. (RCW 90.48.080 and WAC 173-201A-510(5)).

3. Quality Assurance Plan (QAP): (RCW 90.48.080)
EPA must review and approve all QAP requirements in Section II.A of the permit and any subsequent modification to the QAP.

4. Best Management Practices (BMP) Plan: (RCW 90.48.080)
Use of a BMP Plan infers that there is reasonable potential to violate water quality standards. Ecology concurs that BMPs are an appropriate mechanism for purposes of source control and eliminating toxic pollutants into receiving waters. However, elements of the BMP Plan, as written in the draft NPDES permit, are not quantifiable nor do they provide assurance that BMP implementation will be adaptively managed. Therefore, the following conditions related to the BMP Plan must be included in the final permit:

a. The BMP Plan must be subject to EPA review and approval. As a permit submittal, the initial report and any annual updates must be reviewed and approved by EPA to ensure the plan is comprehensive, complete and accurate.

b. Plan requirements include a provision for reporting sampling data. This sampling must be designed in a way to quantify source identification and reductions in order to substantiate the adaptive management process that makes a BMP approach successful. The sample design and data analysis, including methods and method reporting levels, must be included in the QAP (Section II.A) and updated as necessary.

c. The annual report submittal requirement in Section II.B.4 of the permit must also include the adaptive management procedures implemented based on the results of all monitoring used to evaluate the BMP.

5. Environmentally Acceptable Lubricants: (RCW 90.48.080)
   EPA must review and approve all EAL annual reports. The initial EAL report must be reviewed and approved by both EPA and Ecology to ensure the plan is comprehensive, complete, accurate, and concurs with the state's interpretation of technical infeasibility.

6. PCB Management Plan: (RCW 90.48.080 and 90.48.520)
   EPA and Ecology must review and approve the initial PCB Management Plan. Ecology concurs that BMPs are an appropriate mechanism for purposes of source control and eliminating PCB release into receiving waters. As a permit submittal, any annual updates must be reviewed and approved by EPA to ensure the plan is comprehensive, complete and accurate.

7. Cooling Water Intake Structures: (90.48.080)
   a. EPA must review and approve the cooling water intake structure (CWIS) annual report. Sixteen of the twenty-one permitted outfalls are for cooling water with discharge flows totaling approximately 17 million gallons per day (MGD). The 2014 316(b) rule requires implementation of best technologies available for minimization of fish impingement mortality and adverse effects from entrainment (40 CFR 125.94(c) and 40 CFR 125.94(f), respectively).

   b. The initial CWIS annual report must be submitted to and reviewed by Ecology. Given that no information related to the CWIS design, including screen design, was provided with the NPDES permit application, this first annual report must include information on all cooling water intake structures that address the missing application submittal requirements of 40 CFR 122.21(r)(2) and (3) and applicable provisions of paragraphs (4), (5), (6), (7) and (8). This information is necessary for concurrence with EPA's best technology available (BTA) determination.

   c. The Permittee must develop an operation and maintenance manual that includes procedures for evaluating both impingement and entrainment related to the CWIS. This does not include the intake for hydroelectric generating waters. Ecology reserves the right to reopen this certification in the event we do not agree with EPA's BTA determination based on design information included in the first annual report. (40 CFR 122.21(r))

   d. EPA's rules at 40 CFR 125.98(b)(1) also require that the final NPDES permit specifically include the following language "Nothing in this permit authorizes take for the purposes of a facility's compliance with the Endangered Species Act". The final permit must include this condition. (WAC 173-201A-200(1))

C. Timing Requirements

1. This Certification is valid until the expiration date including any administrative extension or termination date of NPDES Permit No. WA0026816.

D. Notification Requirements

2. The Applicant shall enforce and the Permittee must comply with all the reporting and notification conditions of the NPDES permit, including conditions of the permit requiring the Permittee to report to Ecology.

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 **Pollution Control Hearings Board** 1111 Israel RD SW STE 301 Tumwater, WA 98501	**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:

Eleanor Ott, PE
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P.O. Box 47600
Olympia, WA 98503-7600
(360) 407-6433
eleanor.ott@ecy.wa.gov

MORE INFORMATION

- **Pollution Control Hearings Board Website**
  www.eho.wa.gov/Boards_PCHB.aspx
- **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**
  http://www.ecy.wa.gov/biblio/wac173204.html
- **Chapter 173-200 WAC Water Quality Standards for Ground Waters of the State of Washington**
  http://www.ecy.wa.gov/biblio/wac173200.html
- **Chapter 173-201A WAC Water Quality Standards for Surface Waters of the State of Washington**
  http://www.ecy.wa.gov/biblio/wac173201A.html

SIGNATURE



May 7, 2020

Vincent McGowan, P.E.
Water Quality Program Manager
Department of Ecology
State of Washington