

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF AN)	AGREED ORDER
AGREED ORDER WITH:)	DOCKET # 16958
Kaiser Aluminum Washington, LLC)	

To: Jason Walsh
Senior VP, Flat Rolled Products
Kaiser Aluminum Washington, LLC
PO Box 15108
Spokane Valley, WA 99215

Order Docket #	16958
Site Location	Trentwood, 15000 E Euclid Ave, Spokane Valley

I. INTRODUCTION

This is an Agreed Order between the Department of Ecology (Ecology) and Kaiser Aluminum Washington, LLC (Kaiser) prepared in compliance with Chapter 90.48 RCW and the rules and regulations of the Department of Ecology. Actions undertaken in this Agreed Order are intended to improve water quality in the Spokane River.

II. RECOGNITION OF ECOLOGY'S JURISDICTION

This Agreed Order is issued pursuant to the authority vested in Ecology by the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. sec 1311, et seq. and Chapter 90.48 Revised Code of Washington (RCW).

Nothing in this Agreed Order shall in any way relieve Kaiser of its obligations to comply with the requirements of administratively extended Permit No. WA0000892, nor shall anything in this Agreed Order limit Ecology's authority to enforce the provisions of the aforementioned Permit No. WA0000892.

III. FINDINGS OF FACT

Ecology renewed NPDES Permit No. WA0000892 to Kaiser in July 2011, with an expiration date of June 30, 2016. Kaiser submitted a timely permit renewal application on December 15, 2015, which Ecology accepted on April 15, 2016. The NPDES permit has been administratively extended in accordance with the State's Administrative Procedures Act, RCW 34.05.422(3).

The Environmental Protection Agency (EPA) promulgated human health based water quality criteria for the State of Washington under 40 CFR Part 131.45 in December 2016. In May 2019, EPA announced its decision to revise Washington's existing human health based water quality criteria and Washington has challenged EPA's decision in a lawsuit filed in the U.S. District Court for the Western District of Washington. Due to the regulatory uncertainty surrounding the

human health based water quality criteria for PCBs, Ecology has delayed the renewal of NPDES Permit No. WA0000892.

IV. WORK TO BE PERFORMED

IT IS AGREED that Kaiser shall take the following actions by the dates set forth below. Kaiser has participated in defining these actions and the dates by which they shall be completed. Kaiser shall also submit permit applications and documents needing approvals from the various government agencies in a timely fashion in order that the dates for the various actions are able to be met.

IV.A. ALL KNOWN, AVAILABLE, AND REASONABLE METHODS FOR PREVENTION, CONTROL, AND TREATMENT (AKART) ALTERNATIVES FOR PCB REDUCTION

Kaiser must prepare and submit an approvable engineering report to Ecology for review and approval at the completion of the following:

Task 1

Within 45 days after the effective date of the Order, Kaiser shall submit for Ecology review and approval, the list of identified technologies and or other methods for prevention and control to reduce PCB in Kaiser's effluent and a description of the process to be used to evaluate the identified technologies and methods.

This submittal shall also include a schedule of planned actions for effluent flow reduction at the facility. The schedule must include detailed descriptions of planned projects, implementation schedule, and expected flow reductions.

Task 2

Within 120 days of receiving from Ecology written approval and acceptance of the Task 1 submittal, Kaiser shall submit for Ecology review and approval, the results of the approved evaluation process and a proposed scope and schedule for bench scale testing of candidate technologies and/or methods for prevention and control of PCB in Kaiser's effluent.

Task 3

In accordance with the approved scope and schedule for bench scale testing, Kaiser shall submit for Ecology review and approval, the results of the approved bench scale testing and a proposed scope and schedule for pilot scale testing of candidate technologies and/or methods for prevention and control of PCB in Kaiser's effluent.

Task 4

In accordance with the approved scope and schedule for pilot scale testing, Kaiser shall submit for Ecology review and approval, the results of the approved pilot scale testing and a proposed schedule for the submittal of an approvable engineering report in accordance with the requirements of chapter 173-240 WAC.

Task 5

In accordance with the approved schedule, Kaiser shall submit an approvable engineering report in accordance with the requirements of chapter 173-240 WAC.

In addition to the requirements of chapter 173-240 WAC, the engineering report must also include the following related to treatment to reduce PCB levels in the facility's effluent:

1. Engineering and financial analysis of all known, available, and reasonable treatment alternatives to reduce PCBs in Kaiser's effluent.
2. Evaluation of technically feasible treatment alternatives.
3. Economic feasibility demonstration for technically feasible alternatives.

The engineering report must also include the following items:

All other known, available, and reasonable methods for prevention and control to reduce PCBs in the effluent.

IV.B. SPOKANE RIVER REGIONAL TOXICS TASK FORCE

1. Implementation

In conjunction with the requirements contained in Section S7 entitled "Regional Toxics Task Force" of NPDES Permit No. WA0000892, Kaiser has agreed to implement the following elements, within its control, from the Spokane River Regional Toxics Task Force (SRRTTF) *2016 Comprehensive Plan to Reduce Polychlorinated Biphenyls (PCBs) in the Spokane River* (Comprehensive Plan):

- Screening for PCB Containing Materials
- Building Demolition and Disposal
- PCB Containing Electrical Equipment
- Leak Prevention/Detection in Electrical Equipment

Kaiser shall document the implementation of the above items in the PCB Pollutant Minimization Plan and its annual updates.

2. Measurable Progress

Ecology will continue the measurable progress determinations. Ecology will use the information collected and presented in the Pollutant Minimization Plan and Kaiser's annual updates (Order Condition IV.C.2) and data collected during activities required in Permit No. WA0000892. The assessment period began on January 1, 2015 and extends through the year 2019. Ecology will work with Kaiser to identify and collect additional information, as needed, to help complete the assessment of inputs, outputs and outcomes. The determination will assess progress toward meeting the State's Water Quality Standards.

IV.C. PCB Pollutant Minimization Plan (PMP)

The goal of the PCB Pollutant Minimization Plan (PMP) is to maintain, or lower, effluent loading of total PCB in the discharge through identified and quantified control actions. Kaiser will identify, implement, and evaluate the efficacy of these actions in the PMP.

1. PCB PMP

Within one year after the effective date of this Order, Kaiser must develop a PCB PMP and submit it to Ecology for review and approval. The PCB PMP shall be updated as necessary in conjunction with the PCB PMP Annual Report. The Plan must include:

- a) A section that lists members of the cross functional team that developed the initial PCB PMP and those that are responsible for the implementation and on-going revisions to the Plan. The designated team leader for the PCB PMP development, implementation, and on-going revisions must be identified.
- b) A section that describes PCB PMP items that have been implemented and an estimate of their effectiveness with respect to either total PCB effluent loading or effluent concentration reductions.
- c) A section that identifies any proposed or considered PCB PMP items along with an evaluation of their feasibility, both technical and economic. As appropriate, these PCB PMP items may include substitution of materials, treatment system performance improvement actions, and operational process or procedure revisions or modifications. Discharge flow reduction actions are a required element of the PCB PMP. The PCB PMP shall include the elements identified in Section IV.B.(1).
- d) A section that provides a schedule for the implementation of feasible PCB PMP items that have been identified above.

2. PCB PMP Annual Report

By July 1st of each year beginning with 2020, a PCB PMP Annual Report for the previous calendar year must be submitted to Ecology. The Annual Report must include:

- a) A section that provides a summary of the previous calendar year's effluent PCB data. The data summary shall include PCB effluent loading and concentration data. The data summaries must include congener, homologue, dioxin like congener, and total PCB results. Results shall be presented on an uncensored basis and on a blank censored basis using 5 and 10 times the values detected in the corresponding laboratory blank.
- b) A section that provides a summary of the previous calendar year's Walnut Shell Filter System's (WSFSs) inlet PCB loading and concentration for total PCB.
- c) A section, as appropriate, that contains any monitoring information relative to the PCB PMP not already provided elsewhere in the Annual Report.
- d) A section that evaluates the overall effectiveness of all PCB PMP activities that have been implemented with respect to both effluent loadings and concentration and WSFS inlet loading and concentration.
- e) A section that describes any updates being made to the PCB PMP.

3. PCB Quality Assurance Project Plan (QAPP) for PCB Monitoring

Kaiser must submit a PCB QAPP for Ecology review and approval for all PCB monitoring data provided under this Order within 90 days of the effective date of this Order. The QAPP shall be prepared in accordance with the guidelines provided in Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, Ecology publication 04-03-030.

Kaiser must conduct all PCB sampling and analysis as required by Condition S2. of NPDES Permit No. WA0000892 in accordance with the approved quality assurance project plan.

4. PCB Source Identification and Cleanup

In conjunction with the requirements contained in Section S6B entitled "PCB Source Identification and Reduction" of NPDES Permit No. WA0000892, Kaiser shall include in its

semiannual reports (May 15th and November 15th of each year) a summary of its activities with respect to minimizing the potential risks of PCB discharge from incoming materials to the facility. The initial report required under this section shall describe the risk evaluation process used, a description of how the evaluation process will be used going forward, and a summary of the assessment findings at the time of the initial report under this Order.

5. Action Level for Discharge Investigation

In the event that the monthly average PCB discharge level in Outfall 001 exceeds the Action Level of 122 milligrams per day, (1) Ecology must be notified within one working day after receipt of the final analytical results, (2) any archived samples from internal Outfall 004 and Outfall 005 must be analyzed using low level 8082 laboratory procedures with a target detection limit of 5 ng/L for Aroclor 1242, and (3) the findings of all sampling efforts related to the exceedance of the Action Level must be reported to Ecology within 15 days of receiving the final analytical results. In addition to final analytical results, the report must also contain the results of any internal reviews of laboratory QA/QC information and process or wastewater treatment system operations during the exceedance period.

7. Discharge of Excess Groundwater through Outfall 007

Kaiser must submit a plan for the use, termination, or reduction of excess groundwater discharged through Outfall 007 to the Spokane River within 6 months after the effective date of this Order.

IV.D. RECEIVING WATER STUDY OF TEMPERATURE

Kaiser must collect information on the effluent and receiving water to determine if the effluent has a reasonable potential to cause a violation of the temperature water quality standard. If reasonable potential exists, Ecology will use this information to calculate effluent limits at permit renewal and may require Kaiser to take additional actions to reduce temperature discharges prior to permit renewal.

Kaiser must:

1. Submit a Sampling Quality Assurance Project Plan for Ecology review and approval within 6 months after the effective date of this Order.
2. Conduct all sampling and analysis in accordance with the guidelines given in *Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies*, Ecology Publication 04-03-030 (<https://fortress.wa.gov/ecy/publications/documents/0403030.pdf>).

A model QAPP specific for temperature is available at <https://fortress.wa.gov/ecy/publications/documents/0503202.pdf>

3. Measure temperature in the ambient water upstream of the Outfall 001 during the months of June through October, beginning June 1, 2020 unless delayed by river flow conditions that prevent the safe deployment and operation of the measurement system.
4. Use micro-recording temperature devices known as thermistors to measure temperature. Ecology's Quality Assurance Project Plan Development Tool (*Standard Operating Procedures for Continuous Temperature Monitoring of Fresh Water Rivers and Streams*)

contains protocols for continuous temperature sampling. This document is available online at <https://fortress.wa.gov/ecy/publications/documents/1803205.pdf>

5. Calibrate the devices as specified in the *Standard Operating Procedures for Continuous Temperature Monitoring of Fresh Water Rivers and Streams* unless using recording devices certified by the manufacturer. Ecology does not require manufacture-specific equipment as given in the Standard Operating Procedures document; however, if Kaiser wishes to use measuring devices from another company, it must demonstrate the accuracy is equivalent.
6. Set the recording devices to record at one-half-hour intervals.
7. Report temperature monitoring data as the daily maximum and the monthly maximum of the daily maximum. The model QAPP shows an example of these calculations.
8. Use the temperature device manufacturer's software to generate (export) an Excel text file of the temperature data for each June-October period. Send this file and placement logs to Ecology by December 31 of the monitoring year. The placement logs should include the following information for both thermistor deployment and retrieval: date, time, temperature device manufacturer ID, location, depth, whether it measured air or water temperature, and any other details that may explain data anomalies. An example of a placement log is shown in Attachment D-2 of the document referenced in item 4 above.

IV.E. Cooling Water Intake Structure (CWIS)

The following requirements apply to the operation and maintenance of Kaiser's cooling water intake structure (CWIS) unless Kaiser ceases operation of its CWIS within 18 months of the effective date of this Order and notifies Ecology of the cessation of operation of the CWIS:

Kaiser must, at all time, properly operate and maintain the CWIS including any existing technologies used to minimize impingement and entrainment.

Kaiser must also report any significant impingement or entrainment events to Ecology within 24 hours at 509-329-3400.

Kaiser must prepare an information and compliance report for the CWIS and submit it to Ecology for review and approval through the Water Quality Permitting Portal – Permit Submittals application within two years after the effective date of this Order.

The information and compliance report must include a determination on the applicability of 40 CFR Parts 125.94 through 125.99 to the CWIS, per 40 CFR Part 125.91.

If 40 CFR Parts 125.94 through 125.99 apply, the information and compliance report must address the submittal requirements of 40 CFR 122.21(r)(2) and (3) and applicable provisions of paragraphs (4), (5), (6), (7), and (8).

V. PROGRESS REPORTING

Kaiser shall provide semi-annual progress reports (January 1 to June 30 and July 1 to December 31) on the status of the work to be performed under Section IV of this Agreed Order. Progress reports shall include, at a minimum, sections related to work completed, work in progress, and deliverables submitted during the reporting period. Progress reports shall be submitted within 60 days of the end of the reporting period.

Kaiser shall immediately notify Ecology of any occurrence which may result in noncompliance with the requirements of this Agreed Order. Such notifications shall state the nature of the potential noncompliance, the reason(s) therefore and the actions taken by Kaiser to address the potential noncompliance.

VI. AMENDMENTS TO THE AGREED DEADLINES

Amendments to the agreed deadlines in this Agreed Order may be requested for good cause. Extension of the deadlines will only be granted when requests for extensions are submitted in writing, in a timely fashion, and demonstrate good cause for granting the extension.

To be effective, all proposed amendments must be signed by the person with signature authority for each party.

VII. EFFECTIVE DATE

This Order is effective on the date the agreement has been signed by both parties.

VIII. TERMINATION OF THE AGREED ORDER

Upon completion by Kaiser of the actions identified in Section IV of this Agreed Order or the incorporation of any actions identified in Section IV into a future NPDES Permit renewal and issuance of a Notice of Compliance by Ecology, the requirements of this Agreed Order shall be deemed to be fulfilled and shall have no further effect.

IX. DISPUTE RESOLUTION

If a dispute arises between Ecology and Kaiser regarding any noncompliance with this Agreed Order, the parties shall attempt to resolve the dispute by informal resolution. A dispute shall be considered to have arisen when one party notifies another, in writing, that there is a dispute. If the parties cannot resolve the dispute informally within thirty (30) days, Kaiser shall serve on Ecology a written Statement of Position. Within thirty (30) days after receipt of Kaiser's Statement of Position, Ecology shall provide Kaiser with a final administrative decision.

X. ENFORCEMENT

Failure to comply with this Agreed Order may result in the issuance of civil penalties of up to \$10,000 per day or other actions, whether administrative or judicial, to enforce the terms of this Agreed Order.

XI. THIRD PARTY RIGHT TO APPEAL

By signing this Agreed Order, Kaiser may not appeal this Agreed Order, however, a third party may.

A party other than Kaiser has 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 both 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.

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320.

XII. 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 Road SW STE 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

XIII. CONTACT INFORMATION

Please direct all questions about this Order to:

Pat Hallinan
Department of Ecology
Eastern Regional Office
4601 N Monroe Street
Spokane, WA 99205

Phone: (509) 329-3500
Email: phal461@ecy.wa.gov

XIV. 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>
- **Ecology's Laws, rules, & rulemaking website**
<https://ecology.wa.gov/About-us/How-we-operate/Laws-rules-rulemaking>

XV. SIGNATURES

Jason Walsh
Senior VP, Flat Rolled Products

Date

Adriane P. Borgias
Section Manager
Water Quality Program
Eastern Regional Office

Date