

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

|                      |   |                |
|----------------------|---|----------------|
| IN THE MATTER OF AN  | ) | AGREED ORDER   |
| ADMINISTRATIVE ORDER | ) | DOCKET # 15600 |
| AGAINST:             | ) |                |
| The Boeing Company   | ) |                |
| Susanne McIlveen     | ) |                |

To: Susanne McIlveen  
The Boeing Company  
P.O. Box 3707 MC 4C-71  
Seattle, WA 98108-2207

|                       |  |
|-----------------------|--|
| <b>Order Docket #</b> | 15600                                      |
| <b>Site Location</b>  | 725 E. Marginal Way S<br>Seattle, WA 98108 |

**I. INTRODUCTION**

This is an Agreed Order between the Department of Ecology (Ecology) and The Boeing Company (Boeing), to achieve compliance with Chapter 90.48 Revised Code of Washington (RCW) by taking certain actions, which are described below, to address pollutants in stormwater samples above benchmark levels at the Boeing Developmental Center.

**II. 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 RCW.

RCW 90.48.030 provides that Ecology shall have the jurisdiction to control and prevent the pollution of streams, lakes, rivers, ponds, inland waters, salt waters, water courses, other surface and underground waters of the state of Washington.

RCW 90.48.120 authorizes Ecology to issue administrative orders requiring compliance, as appropriate under the circumstances, whenever the department deems immediate action is necessary to accomplish the purposes of chapter 90.48 RCW.

Boeing agrees to undertake all actions required of it by the terms and conditions of this Agreed Order and not to contest Ecology's jurisdiction and authority to administer this Agreed Order. Boeing agrees not to appeal this Agreed Order.

Nothing in this Agreed Order shall in any way relieve Boeing of its obligations to comply with the requirements of meeting RCW 90.48. Nor shall anything in this Agreed Order limit Ecology's authority to enforce the provisions of RCW 90.48.

### **III. FINDINGS OF FACT**

Ecology's determination that immediate action is appropriate to accomplish the purposes of chapter 90.48 RCW is based on the following facts:

The Boeing Developmental Center is covered under ISGP, permit number WAR000146. Permit Condition S5 establishes benchmark values and monitoring requirements. Benchmark means a pollutant concentration used as a permit threshold, below which a pollutant is considered unlikely to cause a water quality violation, and above which it may. When pollutant concentrations exceed benchmarks, corrective actions identified in permit condition S8 take effect. Permit Condition S10 requires that dischargers not cause or contribute to a violation of surface water quality standards.

In 2015, stormwater discharge samples at the Boeing Developmental Center exceeded ISGP benchmark values and triggered Level 3 corrective action requirements for Copper and Zinc under permit condition S8.

Permit condition S8 allows a permittee to request a time extension or waiver for corrective action requirements. Boeing requested a waiver and time extension for Level 3 corrective action requirements on or about May 15, 2016. Ecology granted an extension for Level 3 corrective action requirements in Administrative Order #14012 issued on February 8, 2017. Under Administrative Order #14012 Boeing was ordered to take the following actions:

- Pursuant to Permit Conditions S8.D.1 and S8.D.2, Boeing shall review, and revise as appropriate the SWPPP to ensure full compliance with Permit Condition S3. Boeing shall submit the revised SWPPP to Ecology for review, not later than February 28, 2017;
- Pursuant to Permit Condition S8.D.3, Boeing shall submit an Engineering Report, for Ecology review and approval no later than May 15, 2017; and
- Pursuant to Permit Condition S8.D.5, Boeing shall implement the revised SWPPP, inclusive of Ecology approved treatment BMPs, no later than September 30, 2017.

Boeing appealed Administrative Order #14012 to the Pollution Control Hearings Board.<sup>1</sup> Boeing submitted an Engineering Report to Ecology on June 27, 2017. Boeing supplemented the Engineering Report with additional information regarding the expected performance of catch basin inserts proposed for certain drainage areas within the Developmental Center. Ecology conducted a site visit to the Developmental Center on July 19, 2017. Boeing has further supplemented the Engineering Report to provide for the use of catch basin inserts at additional drainage areas within the Developmental Center.

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<sup>1</sup> By entering into this Agreed Order, the parties agree to take the necessary steps to dismiss Boeing's appeal. The parties further agree that the merits of Boeing's appeal, as well as Administrative Order No. 14012 which prompted the appeal, are subsumed under this Agreed Order and the issues therein are resolved by this Agreed Order.

Based on the Engineering Report, site visit, supplemental information provided by Boeing, as well as a review of stormwater monitoring data and storm drain solids data, Ecology determined that Boeing needs to monitor additional drainage areas for ISGP parameters, for NWTPH-Dx, and for PCBs.

Ecology finds that the Engineering Report with supplemental information described herein meets the Engineering Report requirements in Permit S8.D.3. As described in more detail below, Ecology is requiring, and Boeing agrees to, accelerated consideration of advanced stormwater treatment if future benchmark exceedances meet the specified "trigger" conditions set forth below.

#### **IV. COMPLIANCE SCHEDULE**

For the reasons detailed above, and in accordance with RCW 90.48.120, IT IS AGREED that Boeing shall take the following actions by the dates set forth below.

##### **Frequency of Monitoring**

By January 1, 2018, Boeing shall modify the SWPPP and begin monitoring at least once in all months when a discharge occurs during Developmental Center *regular business hours* as defined in the ISGP. Sample data reported on DMRs may be averaged in assessing quarterly compliance with ISGP benchmarks.

##### **Monitoring Locations**

The Developmental Center has 19 drainage areas, each with an associated outfall (DC1 through DC19).

Boeing has been monitoring discharges from four drainage areas: DC2, DC5, DC9, and DC12. By January 1, 2018, Boeing shall update the SWPPP and implement monitoring for additional drainage areas DC1, DC3, DC4, DC10, DC11, DC13, DC15, and DC19.

##### **Parameters**

Boeing is currently sampling for the standard ISGP parameters, plus TSS (with an effluent limit). Storm drain solids and water quality data indicate that TPH and PCBs are contaminants of concern at the facility.

Boeing agrees to monitor for ISGP benchmark pollutants, for NWTPH-Dx, and for PCBs in the drainage areas identified above as monitoring locations.

Exceedances of the TPH benchmark (10 mg/L), an exceedance of the standard ISGP benchmark parameters, or the TSS limit will trigger the requirement to implement Phase 2 treatment, as described in the following section.

PCBs shall be monitored at least monthly as part of DMR parameters as report only. PCB sampling data will not be used to determine if the requirement to implement Phase 2 treatment is triggered. PCB sampling analysis must be conducted in accordance with EPA Method 8082, with a minimum lower detection limit of 0.01 µg/L. PCB sampling data must be reported monthly on Discharge Monitoring Reports (DMRs) electronically using Ecology's WQWebDMR system. If the measured concentration is below the detection level, Boeing shall report single analytical values below detection as "less than the detection level (DL)" by entering "<" followed by the numeric value of the detection level (e.g. "<0.01"). All other values above DL must be reported as the numeric value.

## **Phased and Contingent Treatment Approach**

### **Phase 1 – Preliminary Treatment**

#### *Treatment technology*

In the Engineering Report submitted to Ecology on June 27, 2017, Boeing proposed targeted application of catch basin inserts as treatment for a Level 3 Corrective Action in drainage area DC 9 and as part of the treatment approach for drainage area DC5.

Ecology determined that the Engineering Report did not contain sufficient information to show a reasonably likelihood that benchmark levels would be met on a consistent basis within drainage area DC5 and drainage area DC9. Ecology also asked that Boeing consider whether treatment would be appropriate for other drainage areas at the Developmental Center. Finally, Ecology requested additional information on the treatment technology to be used for the catch basin inserts.

In response to Ecology's comments and requests, Boeing provided additional information on the technology to be used by Boeing for treatment in catch basin inserts and on the expected performance of the catch basin inserts. Boeing also provided information on the use of catch basin inserts in additional drainage areas at the Developmental Center that have industrial activity.

Based on this information, Boeing will install catch basin inserts in DC1, DC2, DC3, DC4, DC5, DC9, DC10, DC11, DC12, DC 13, DC15, and DC19.

#### *Engineering report*

With the supplemental information provided by Boeing and described above, Ecology approves the Engineering Report subject to the provisions for Phase 2 – Advanced Treatment set forth below.

## **Phase 2 – Advanced Treatment**

Based on prior exceedances of ISGP benchmarks, Ecology is requiring, and Boeing agrees to, accelerated consideration of advanced stormwater treatment if future benchmark exceedances meet the specified “trigger” conditions set forth below.

Phase 2 shall require the design of advanced treatment. A pilot study or bench test is required to prove the selected treatment system will meet the benchmark requirement consistently.

### *Triggers*

Subsequent to the first quarter of 2018, an exceedance of a benchmark level, or effluent limitation, for a monitoring parameter, other than PCBs, in any quarter, shall trigger the requirement to implement advanced treatment. Monthly samples shall be averaged to provide a single number for a quarter, as per permit condition S4.B.6.c.

### *Engineering Report*

An approvable Engineering Report for advanced treatment, consistent with Permit condition S8.D.3, shall be submitted to Ecology for review and approval within 90 days of triggering the requirement to implement advanced treatment.

The Engineering Report must include:

- Brief summary of the treatment alternatives considered and why the proposed option was selected. Include cost estimates of ongoing operation and maintenance, including disposal of any spent media;
- The basic design data, including characterization of stormwater influent, and sizing calculations of the treatment units;
- A description of the treatment process and operation, including a flow diagram;
- The amount and kind of chemicals used in the treatment process, if any. Note: Use of stormwater treatment chemicals requires submittal of Request for Chemical Treatment Form;
- Results to be expected from the treatment process including the predicted stormwater discharge characteristics;
- A statement, expressing sound engineering justification through the use of pilot plant data, results from similar installations, and/or scientific evidence that the proposed treatment is reasonably expected to meet the permit benchmarks; and
- Certification by a licensed professional engineer.

The advanced treatment system shall address all standard ISGP parameters, TPH, and PCBs. Phase 2 – advanced treatment shall be installed and operational within 210 days of triggering the requirement to implement advanced treatment.

## **V. PROGRESS REPORTING**

Boeing shall provide a progress report to Ecology on or before January 1, 2018, identifying the status for each of the actions listed in Section IV of this Agreed Order including required updates

to the Developmental Center SWPPP and confirmation that all catch basin inserts have been installed as provided herein.

#### **VI. AMENDMENTS TO THE AGREED COMPLIANCE SCHEDULE**

Amendments to the agreed compliance schedule may be requested for good cause. Extension of the deadlines imposed by this Agreed Order will only be granted when requests for extensions are submitted in writing, in a timely fashion, and demonstrate good cause for granting the extension. Failure to obtain financial assistance in the form of grants or loans shall not be considered good cause.

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**

This Agreed Order shall remain in effect through completion by Boeing of the actions identified in Section IV of this Agreed Order and through and termination date of the current ISGP on December 31, 2019.

#### **IX. DISPUTE RESOLUTION**

If a dispute arises between Ecology and Boeing 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, Boeing shall serve on Ecology a written Statement of Position. Within thirty (30) days after receipt of Boeing's Statement of Position, Ecology shall provide Boeing 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, Boeing may not appeal this Agreed Order, however, a third party may.

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**

| <b>Street Addresses</b>  | <b>Mailing Addresses</b>  |
|--|---|
| <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 Road SW<br>STE 301<br>Tumwater, WA 98501          | <b>Pollution Control Hearings Board</b><br>PO Box 40903<br>Olympia, WA 98504-0903                       |

#### **XIII. CONTACT INFORMATION**

Please direct all questions about this Order to:

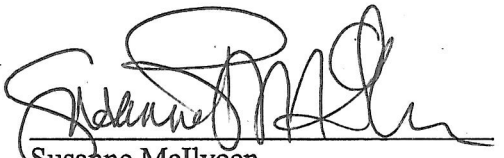
Alex White  
Department of Ecology  
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Water Quality Program  
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Email: alex.white@ecy.wa.gov

#### XIV. MORE INFORMATION

- **Pollution Control Hearings Board Website**  
[www.eho.wa.gov/Boards\\_PCHB.aspx](http://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>
- **Laws:** [www.ecy.wa.gov/laws-rules/ecyrcw.html](http://www.ecy.wa.gov/laws-rules/ecyrcw.html)
- **Rules:** [www.ecy.wa.gov/laws-rules/ecywac.html](http://www.ecy.wa.gov/laws-rules/ecywac.html)

#### XV. SIGNATURES

  
Susanne McIlveen  
BDS Puget Sound EHS Senior Leader  
The Boeing Company

1-9-18  
Date

  
Rachel McCrea  
Water Quality Section Manager  
Northwest Regional Office

1-9-18  
Date