



STATE OF WASHINGTON  
**DEPARTMENT OF ECOLOGY**

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

July 1, 2022

Eric Zimpfer  
BP Cherry Point Refinery  
4519 Grandview Road  
Blaine, WA 98230

**Re: Agreed Order 20840**

Dear Eric Zimpfer:

Enclosed is a copy of the signed and effective Agreed Order 20840. The effective date of the order is July 1, 2022.

The final agreed order and supporting documents are also available online at: [Industrial Facility Permits](#).

If you have any questions, please contact Liem Nguyen at (360) 790-4730 or [liem.nguyen@ecy.wa.gov](mailto:liem.nguyen@ecy.wa.gov).

Sincerely,

James DeMay, P.E.  
Industrial Section  
Solid Waste Management Program

Enclosure: Agreed Order 20840

DEPARTMENT OF ECOLOGY  
THE STATE OF WASHINGTON

IN THE MATTER OF AN AGREED ORDER  
BETWEEN THE DEPARTMENT OF ECOLOGY  
AND BP CHERRY POINT REFINERY

Agreed Order  
Docket No. 20840

To: Eric Zimpfer  
BP Cherry Point Refinery  
4519 Grandview Road  
Blaine, WA 98230

## **I. INTRODUCTION**

The BP Cherry Point Refinery (BP) and the State of Washington, Department of Ecology (Ecology), enter into the following Agreed Order (Order) for the completion of chronic bioassay testing as set out below. The objective of the Whole Effluent Toxicity (WET) testing conducted under this Order is to gather additional data regarding the potential toxicity of BP's effluent to the state's Pacific herring using an existing EPA test method with critical values adjusted for sensitivity. Ecology believes the actions required by this Order are in the public's interest.

## **II. JURISDICTION**

Ecology's Industrial Section, Solid Waste Management Program, has the authority to enter into this Order under the following state statutes and regulations:

RCW 90.48.030 directs Ecology to control and prevent the pollution of waters of the state of Washington.

RCW 90.48.260 designates Ecology as the state water pollution control agency for all purposes of the federal Clean Water Act.

RCW 90.48.520 directs Ecology to control toxicants in wastewater.

RCW 90.48.250 authorizes Ecology to make agreements and enter into such contracts as are appropriate to carry out a program of monitoring the condition of the waters of the state and the effluent discharged therein.

WAC 173-220-210(1)(ii) authorizes Ecology to require the use of biological monitoring methods in order to measure pollutants in a discharge directly or indirectly through the use of accepted correlation coefficients or equivalent measurements.

### III. PARTIES BOUND

This Order shall apply to and be binding upon the parties to this Order – BP and Ecology – and their successors, and assigns. The undersigned representatives of each party hereby certify that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with the Order. BP agrees to undertake all actions required by the terms and conditions of this Order and to not contest the conditions of this Order or Ecology's authority to issue and administer this Order. No changes in ownership or corporate status shall alter BP's responsibilities under this order.

### IV. EFFECTIVE DATE

This Agreement shall become effective on the date of the final signature.

### V. TERMS AND CONDITIONS

It is hereby ordered that BP shall:

1. Conduct toxicity monitoring on the final effluent from its process wastewater outfall (Outfall 001) twice a year beginning in year 2023. Monitoring shall continue twice annually for 5 years through year 2027. Sampling events shall be conducted at least two weeks apart during the wet weather months of January - June.
2. Conduct the monitoring using the Mysid shrimp (*Americamysis bahia*) survival and growth test, EPA-821-R-02-014, in accordance with the sampling and reporting procedures in Section VI of this Order.
3. If any individual test result shows toxicity at the adjusted CCEC or adjusted ACEC, BP must repeat the testing as soon as possible with freshly collected effluent.

### VI. SAMPLING AND REPORTING REQUIREMENTS

1. BP must collect 24-hour composite or grab effluent samples for toxicity testing. The samples must be cooled to 0 - 6° C during collection and sent to the lab immediately upon completion. The lab must begin the toxicity testing as soon as possible but no later than 36 hours after sampling was completed.
2. The laboratory must conduct water quality measurements on all samples and test solutions for toxicity testing, as specified in the most recent version of Ecology Publication No. WQ-R-95-80, *Laboratory Guidance and Whole Effluent Toxicity Test Review Criteria*.

3. All toxicity tests must meet quality assurance criteria and test conditions in the most recent versions of the EPA test method listed above and Ecology Publication No. WQ-R-95-80, *Laboratory Guidance and Whole Effluent Toxicity Test Review Criteria*. If Ecology determines any test results to be invalid or anomalous, BP must repeat the testing as soon as possible with freshly collected effluent.
4. Except for salinity adjustments, BP must conduct WET tests on an unmodified sample of final effluent. Samples used for WET testing under this Order must be representative of the volume and nature of the process water discharge from the facility during normal operations.
5. The chronic toxicity tests must be performed on a series of at least five effluent concentrations, a lab water control, and a salt control (if the sample is adjusted for salinity. The series must include the adjusted CCEC and the adjusted ACEC. The adjusted CCEC and the adjusted ACEC may either substitute for the effluent concentrations that are closest to them in the dilution series or be extra effluent concentrations. The adjusted CCEC equals **2.4%** effluent. The adjusted ACEC equals **10.8%** effluent. A minimum of four replicates is needed for effluent tests.
6. The laboratory must use control water and dilution water meeting the requirements in the most recent version of the EPA test method referenced above.
7. All whole effluent toxicity tests that involve hypothesis testing must comply with the chronic statistical power standard of 39% as defined in WAC 173-205-020. If the test does not meet the power standard, the Permittee must repeat the test on a fresh sample with an increased number of replicates to increase the power.
8. Reports of individual test results must be submitted to Ecology within 60 days after completion of the test.
9. BP must submit all reports for toxicity testing in accordance with the most recent version of Ecology Publication No. WQ-R-95-80, *Laboratory Guidance and Whole Effluent Toxicity Test Review Criteria*. Reports must contain toxicity data, bench sheets, and reference toxicant results. In addition, BP must submit toxicity test data in electronic format (CETIS export file preferred).

## **VII. 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.

### VIII. THIRD PART RIGHT TO APPEAL

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

A party other than BP 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.

### IX. ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel Road SW STE 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

## X. CONTACT INFORMATION

Please direct all questions about this Order to:

Liem Nguyen  
Department of Ecology  
Industrial Section, Solid Waste Management Program  
PO Box 47600, Olympia, WA 98504

Phone: 360-790-4730  
Email: liem.nguyen@ecy.wa.gov

## XI. 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>


## XII. SIGNATURES

### BP CHERRY POINT REFINERY

  
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Eric Zimpfer  
VP Refining, Cherry Point

6/24/22  
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Date

### STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

  
\_\_\_\_\_  
James DeMay, P.E.  
Industrial Section Manager  
Solid Waste Management Program

July 1, 2022  
\_\_\_\_\_  
Date