

RECOMMENDATION FOR ENFORCEMENT ACTION  
WATER QUALITY PROGRAM

Northwest Regional Office

RFE for Administrative Order No. 16610

Date: January 19, 2023

From: Maia Hoffman  
*Pretreatment Engineer*

Maia Hoffman  
*Signature of Investigator*

**RECOMMEND ENFORCEMENT ACTION BE TAKEN:**

I. Against:

City of Bellingham  
*Company or Governmental Entity*

The Honorable Seth Fleetwood  
Mayor

II. Location:

2221 Pacific Street  
Bellingham, WA 98225  
(360) 778-7735

III. Type of Action

☐ A. Penalty, RCW 90.48.144

☐ B. Notice of Violation, RCW 90.48.120 (1)

☒ C. Follow-up Order, RCW 90.48.120(1)

☐ D. Immediate Action Order, RCW 90.48.120(2)

☐ E. Amendment of Action

☐ F. Other (specify authority) \_\_\_\_\_

IV. Nature of Violation

☐ 1) Unlawful Discharge of Polluting Matter into Waters of the State,  
RCW 90.48.080.

☐ 2) Violation of the Terms of a Waste Discharge Permit Issued under RCW  
90.48.160, 90.48.180 or 90.48.260 through 90.48.262.

- ☐ 3) Discharging Pollutants Without a Permit Authorized under RCW 90.48.160, 90.48.180, or 90.48.260 through 90.48.262.
- ☐ 4) Violation of the Terms of a Regulatory Order or other provisions of RCW 90.48.
- ☐ 5) Agricultural Discharges, RCW 90.48.450. Has consideration been given to the effect of the action on conversion of agricultural to nonagricultural uses? If yes, what attempts have been made to minimize the possibility of such conversion? (Water Quality Program Policy #1-05)
- ☒ 6) Other; Delegation of industrial wastewater pretreatment program authority

V. Name of Watercourse Involved: Bellingham Bay

VI. Recommended Action:

On May 17, 2019, the City of Bellingham submitted an Application for Authorization of its newly developed industrial wastewater pretreatment program following state and federal requirements and guidelines. Ecology approved the City's pretreatment program via letter dated September 18, 2019. It is recommended that this administrative order be issued to the City of Bellingham delegating authority to the City to implement its program. Pretreatment conditions have been incorporated in the City's renewed NPDES permit, WA0023744, and thus commencement of implementation of the City's program shall coincide with the effective date of the new permit.

VII. Purpose of this Action

The purpose of the Order is to memorialize Ecology's exercise of the authority provided at Chapter 90.48.165 RCW to grant qualified municipalities the authority to issue permits and otherwise impose pretreatment standards and requirements to the discharge of non-domestic wastewater from any person whose discharge is tributary to their Wastewater Treatment Plant. The City of Bellingham has through their own Ordinance and inter-jurisdictional agreements, and in their legal sufficiency statement, determined that they possess and are able to exercise all requisite authority. Accordingly, I am recommending Ecology authorize the City of Bellingham, by this Order, to control all Users tributary to its Publicly Owned Treatment Works through application of the program described in the City of Bellingham's "Industrial Pretreatment Program Manual", dated May 2019, and approved revisions thereto.

VIII. Basis of this Administrative Order:

Chapter 90.48.165 RCW gives the Department of Ecology (Ecology) the authority to grant to any city, town, or municipal corporation operating a sewerage system including treatment facilities, the authority to issue permits for the discharge of wastes to such system.

Under provisions of the Clean Water Act, as implemented under provisions of 40 CFR Part 403, the State of Washington has been delegated by the United States Environmental Protection Agency to administer an industrial wastewater pretreatment program. The State of Washington has enabled its authority to administer its delegated pretreatment program through adoption of regulations including Chapter 173-208 WAC (Grant of Authority Sewerage Systems) and Chapter 173-216 WAC (State Waste Discharge Permit Program). The State of Washington administers the pretreatment program for many smaller publicly-owned treatment works (POTWs). The State of Washington delegates administration of pretreatment programs to larger POTWs, particularly those with relatively large numbers of significant industrial users (SIUs).

Ecology has evaluated the number and character of significant industrial users which discharge to the City of Bellingham's sanitary sewer system. Based on this evaluation and the relatively large size of the City's Post Point WWTP, Ecology has determined that the City of Bellingham should be delegated authority to administer an industrial wastewater pretreatment program in conformance with provisions of 40 CFR Part 403 and Chapter 173-208 WAC.

Ecology normally employs a two-step process when it uses an administrative order to require a POTW to develop and implement a delegated industrial wastewater pretreatment program. The first step involves the issuance of an administrative order to submit the elements contained in a *Submission for Approval for a Delegated Industrial Wastewater Pretreatment Program*. The second step of the process involves Ecology's review of the submitted pretreatment program manual and a 30-day public notice and comment period (and public hearing if necessary), and subsequently the issuance of a separate administrative order delegating authority to the POTW to implement the pretreatment program as described in the submitted pretreatment program manual.

By Administrative Order (AO) Number 15677, as amended in February 2018, Ecology required the City of Bellingham to develop an industrial wastewater pretreatment program and submit the program on or before October 31, 2018 to Ecology for approval and subsequent delegation of pretreatment authority. In AO 15677, Ecology described in detail the elements required to be included in the *Application for Authorization* in accordance with WAC 173-208-050, which defines the elements which must be contained in a pretreatment program manual submittal. The City submitted its Pretreatment Program Manual to Ecology on October 31, 2018. The Manual included the City's proposed draft ordinance, funding sources for the program, enforcement response plan, and implementation procedures of the program. The submission also included the City attorney's statement attesting that the City has enough legal authority to administer the program in all its service areas.

After reviewing the submitted pretreatment program manual and all other required and supporting documents including development of local limits and industrial user survey among other things, Ecology sent a letter to the City identifying some needed additions and changes to the City's Pretreatment Program Manual to improve their legal defensibility, to incorporate optional pretreatment streamlining rules as promulgated by the USEPA in 2005 to provide

regulatory flexibility, to address state and federal regulations regarding multijurisdictional issues, and to finalize an approvable pretreatment program. Ecology also sought an endorsement of the proposed program by the City Council in accordance with 40 CFR 403.9 (b)(2) which states that the submission must include *“a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising and/or funding the POTW pretreatment program.”* This endorsement was obtained in the form of a City Council resolution that was approved by the City’s mayor on May 10, 2019.

Ecology also completed the 2010 Federal Pretreatment Program Worksheet and provided to the City to further improve the Submission. The worksheet includes legal authority, technical information, implementation procedures, manpower and financial resources, and the approval process. In this worksheet, relevant provisions of 90.40 RCW, Chapter 173-208 WAC, Chapter 173-216 WAC, and Chapter 173-240 WAC are included to ascertain that the Program also meets state waste discharge permitting program requirements.

Furthermore, Ecology provided numerous state and federal guidance documents for the City reference. Ecology provided the City two months to address the identified deficiencies and recommended changes. Given the extent of additional information and guidance provided by Ecology, the City requested that it be granted an additional 90 days to address all of Ecology’s concerns, which Ecology accepted.

On May 17, 2019, the City submitted to Ecology three copies of its revised Pretreatment Program Manual. One copy of the Manual was mailed to the USEPA Region 10 for their review. The revised Manual met all minimum requirements and hence was twice announced for *“public notice of request for approval by Ecology of the City’s newly developed pretreatment program”* on the Bellingham Herald, during the 30-day period between June 26 and July 26, 2019. The City sent letters to all industrial dischargers in the City, USEPA, Whatcom County, and to the Port of Bellingham announcing its publication of a public notice of request for approval of its application for authorization. The public notice period closed on July 26, 2019. Ecology did not receive any public comments. The USEPA’s Region 10 Pretreatment Coordinator, Mr. Michael Le, called Ecology NWRO’s pretreatment engineer, Biniam Zelelow, on July 12, 2019 seeking explanation on the City’s SIUs and the City’s evaluation of the existing SIUs. The City completed its SIU evaluations and an extensive industrial user survey. These documents were submitted to Ecology in May 2017 as part of the City’s local limits development plan and were approved in August 2017. No further questions or concerns were received by the USEPA.

Having completed an extensive review of the City’s Pretreatment Program Manual and having completed all required public participation procedures in accordance with state and federal regulations, Ecology approved the City’s program by a letter dated September 18, 2019. Following Ecology’s approval, the city council voted unanimously to approve the pretreatment ordinance on October 21, 2019.

Now, therefore, it is recommended that this administrative order be issued to the City of Bellingham delegating authority to the City to implement its program. Pretreatment conditions have been incorporated in the City's renewed permit.

IX. Evidence Obtained:

- ☒ Samples, Lab. Report No.
- ☐ Pictures
- ☐ Video Tape
- ☐ Witness Statements
- ☒ Documents
- ☒ Maps
- ☒ Other: City attorney's statement and city council resolutions

X. Additional Comments:

After the first submittal of the City's program in October 2018, Ecology provided a letter to the City with required and recommended changes to the submittal. A copy of this letter is included in this enforcement folder. Ecology provided guidance documents, manuals, and reference materials for the City to help address the deficiencies and recommended changes. The City addressed all of Ecology's concerns. In addition, Ecology provided an extensive pretreatment program review checklist pointing to specific areas for improvement and change in the City's ordinance, legal authority, and implementation procedures of the program. A copy of this checklist is included in this enforcement folder.

Ecology held numerous extensive phone conferences with the City's attorney to help the City improve its pretreatment ordinance and to address legal authority to implement the program. Extensive discussions were held on how to regulate industrial users outside city limits which use sewer service from the City. The ideal solution is to establish interlocal agreements, which the City has with the Port of Bellingham and Lake Whatcom Water and Sewer District. The agreements include for local administrations to adopt the City's pretreatment program or allow the City to implement its program in those areas.

For other industrial users located in unincorporated Whatcom County, the City has legal authority to take civil administrative actions against violators of the City's pretreatment ordinance and permits, but for those dischargers criminal investigation by the City may not be possible. To address such potential situations, the City has made it, as it also did in the past, a condition of service for industrial users outside its City limits to comply with the City's pretreatment rules and regulations.

- Citation of the specific text in our rules which addresses the delegation procedure are copied below:

**WAC 173-208-060 Delegation procedure.**

(3) After review of the completed application and of comments timely received in response to the notice provided for above, the department shall either deny the request, giving its reasons therefor, find that there is sufficient public interest to warrant holding a public hearing on the application, or issue an order approving the same in whole or in part.

(4) If a public hearing is held upon proper notice, the department shall afford interested parties the opportunity to present their views on the application, and, upon review of all information gathered, shall either deny the application or issue an order approving the same.

(5) Any approval order issued by the department hereunder shall contain conditions and restrictions relative to the administration of the permit program and shall be binding upon the municipality so long as such approval remains in effect. Said approval order may subsequently be altered or amended in whole or in part to reflect changes in applicable laws, regulations, or policies relating to water pollution control. The department shall give the municipality thirty days' notice of any contemplated amendments, unless an emergency precludes the giving of such notice, and will invite comments from the municipality.

[Order DE 75-10, § 173-208-060, filed 4/30/75.]

The final delegation of the pretreatment program to the City of Bellingham was delayed extensively beyond Ecology's approval of program documentation. Ecology typically accomplishes delegation through an order and permit reissuance. The reissuance of the City of Bellingham NPDES permit was itself delayed due to permitting challenges.

#### ENDORSEMENTS

The following actions are recommended to resolve this matter:

I concur with the recommendation.

Monika Kannadaguli, P.E. Monika Kannadaguli

Date January 12, 2023

Industrial Unit Supervisor

Concurrence with recommended action:

Rachel McCre Rachel McCre  
Water Quality Section Manager  
Northwest Regional Office  
Washington State Department of Ecology

Date 1/19/23