



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Region Office

PO Box 330316, Shoreline, WA 98133-9716 • 206-594-0000

June 22, 2023

Christie True, Director
King County Department of Natural Resources & Parks
201 South Jackson St, Suite 600
Seattle WA, 98104

Re: Administrative Order, Phase I Municipal Stormwater Permit #WAR044501

Administrative Order Docket #	21909
Site Location	King County Municipal Stormwater System

Dear Christie True:

The Department of Ecology (Ecology) is issuing the enclosed Administrative Order (Order) requiring King County to comply with:

- Chapter 90.48 Revised Code of Washington (RCW) – Water Pollution Control
- Chapter 173-220 Washington Administrative Code (WAC) – National Pollutant Discharge Elimination System permit program
- Phase I Municipal Stormwater Permit – WAR044501

If you have questions, please contact Roger Chang at roger.chang@ecy.wa.gov or 425-758-5096.

Sincerely,

Rachel McCrea
Water Quality Section Manager
Northwest Regional Office

Enclosure: Administrative Order Docket #21909

By Certified Mail 9171 9690 0935 0233 1619 64

Administrative Order #21909

Christie True

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ecc: Josh Baldi, Division Director, Water and Land Resources Division (WLRD), Department of Natural Resources and Parks (DNRP)

Angela Gallardo, Manager, Water Quality Compliance Unit, Stormwater Services Section, DNRP

Amy Jankowiak, Compliance and Technical Assistance Unit Supervisor, Ecology

PARIS: King County Phase I Municipal Stormwater Permit, WAR044501

State of Washington
Department of Ecology

In the Matter of an Administrative Order Against
King County Department of Natural Resources & Parks
Administrative Order Docket #21909

To: Christie True, Director
Department of Natural Resources & Parks
201 S Jackson Street, Suite 600
Seattle, WA 98104

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Site Location	King County Municipal Stormwater System

The Department of Ecology (Ecology) has issued this Administrative Order (Order) requiring King County Department of Natural Resources and Parks to comply with:

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Chapter 90.48.120(2) RCW gives Ecology the authority to issue Administrative Orders requiring compliance whenever it determines that a person has violated Chapter 90.48 RCW.

RCW 90.48.144 authorizes Ecology to issue penalties for violations of terms or conditions of a waste discharge permit issued pursuant to RCW 90.48.180, 90.48.260 through 90.48.262.

1. Determination of Violation(s), and Order to Comply

Ecology's determination that a violation has occurred or that there is a substantial potential for a violation is based on the following facts.

Background

King County's Department of Natural Resources and Parks owns and operates both catch basins and stormwater facilities within unincorporated King County. Ecology issued the Phase I Municipal Stormwater Permit (WAR044501) to King County for the permit term 2019 – 2024 which conditionally authorizes discharge of stormwater. The Phase I Municipal Stormwater Permit requires King County to perform necessary maintenance of catch basins and stormwater facilities under section S5.C.10.a.ii which states:

(ii) “Unless there are circumstances beyond the Permittee’s control, when an inspection identifies an exceedance of the maintenance standard, maintenance shall be performed:

- (a) Within 1 year for typical maintenance of facilities, except catch basins.
- (b) Within 6 months for catch basins.”

Findings of Fact

- March 14, 2022 – King County notified Ecology in accordance with General Condition G20 (G20) that 24 catch basins did not meet the 6-month maintenance schedule as required by the Phase I permit section S5.C.10.a.ii(b) due to equipment availability. In the G20 notification, King County stated that these 24 catch basins would be cleaned and in compliance by March 31, 2022.
- March 23, 2022 – King County notified Ecology stating that all 24 catch basins noted in the G20 had been cleaned and that King County was back in compliance.
- July 22, 2022 – Two separate G20 notifications were submitted to Ecology.
 - Catch Basin Maintenance: This notification indicated that 26 catch basins (the permit requirement is a rolling requirement every six months after any inspection) did not meet the 6-month maintenance schedule as required by the Phase I permit section S5.C.10.a.ii(a) as a result of migrating software from MIS to Cityworks. The letter stated that by August 31, 2022, the identified catch basins would be cleaned and back in compliance.
 - Stormwater Facility Maintenance: This notification indicated that 6 stormwater facilities did not meet the 1-year maintenance schedule as required by the Phase I permit section S5.C.10.a.ii(a) as a result of nesting birds and the Migratory Bird Treaty Act which prevented maintenance from being completed. The letter stated that by August 31, 2022, King County would perform the facility maintenance and return to compliance.
- September 12, 2022 – King County and Ecology held a meeting and discussed the missed August 31, 2022, deadline that King County had self-imposed in their July 2022 G20 letters. Ecology provided technical assistance to King County and as a result of this meeting King County committed to full compliance for both catch basins and stormwater facilities by their self-imposed deadline of December 31, 2022.
- September 27, 2022 – Two additional G20 update notifications were submitted to Ecology.
 - Catch Basins Maintenance: This notification indicated that the number of catch basins that did not meet the S5.C.10.a.ii(a), 6-month maintenance schedule, had increased from 26 catch basins to 70 catch basins. Additionally, King County

indicated that the original King-County-imposed corrective action deadline of December 31, 2022, would be pushed to March 31, 2023.

- Stormwater Facility Maintenance: This notification indicated that the number of stormwater facilities that did not meet the S5.C.10.a.ii(a) 1-year maintenance schedule, had increased from 6 facilities to 80 facilities. Additionally, King County indicated that the original King-County-imposed corrective action deadline of December 31, 2022, would be pushed to March 31, 2023.
- November 1, 2022 – King County notified Ecology that they have hired third-party contractors to perform needed maintenance. The notification also included tables which detailed additional catch basins and stormwater facilities for which King County did not conduct maintenance per the Permit, but also included assets with completed maintenance. Ecology reviewed the information provided by King County and numerous errors in the table were identified. Ecology noted several discrepancies with dates for when maintenance was supposed to be performed, or assets marked as having had maintenance done which were appearing on the updated tables. However, had those dates been correct, they would have appeared in prior versions of the asset tables as well. Ecology made a subsequent request via email to provide corrections and clarification, but no response from King County was received on this matter.
- February 2, 2023 – After a meeting between King County and Ecology, King County again committed to completing all overdue catch basin maintenance by March 31, 2023, but was now uncertain whether facility maintenance would be completed by that date. In this meeting, Ecology continued to provide technical assistance and expressed concerns with rolling non-compliance since this issue had continued since July 2022. Additionally, Ecology further expressed that if the March 31, 2023, deadline was not met, Ecology may seek enforcement action.
- February 10, 2023 – King County notified Ecology with a list of remaining catch basins and stormwater facilities where Permit-required maintenance schedules were not met, and that two stormwater facility maintenance activities will be pushed back to July 16 due to the Migratory Bird Treaty Act or needing a Hydraulic Project Approval (HPA) permit. Additionally, the County stated they are performing a maintenance capacity analysis to review needed funding and staff.
- April 4, 2023 – King County met with Ecology and provided an update regarding catch basin and stormwater facility maintenance since the March 31, 2023, self-imposed corrective action deadline had passed. King County identified 7 catch basins and 7 stormwater facilities that has still not been maintained. King County said they needed to do field ground truthing to evaluate some of the facilities marked as needing maintenance to verify the issues were in fact impacting facility function.

- April 7, 2023 – King County conducted field verification and provided an update to Ecology regarding the list of remaining catch basins and stormwater facilities in need of maintenance per the Permit. King County noted they are now down to 5 catch basins and 5 stormwater facilities that have not received the required maintenance. King County committed that remaining catch basins and stormwater facilities will be maintained no later than June 22, 2023. As of April 7, 2023, this was the first indication that no newly identified catch basins or stormwater facilities had not been maintained per the Permit.

Violations

King County continues to fail to meet Phase I Municipal Stormwater Permit Special Condition S5.C.10.a.ii for catch basin and stormwater facility maintenance.

Phase I Municipal Stormwater Permit – Section S5.C.10.a.ii

(ii) “Unless there are circumstances beyond the Permittee’s control, when an inspection identifies an exceedance of the maintenance standard, maintenance shall be performed:

- (a) Within 1 year for typical maintenance of facilities, except catch basins.
- (b) Within 6 months for catch basins.”

Corrective Actions Required

Short Term Corrective Actions Required:

In accordance with RCW 90.48.120(2) it is ordered that King County must take the following actions by the dates (milestones) set forth below. The actions are necessary to satisfy the requirements of Chapters 173-220 WAC.

On or before July 15, 2023, King County must:

1. Submit documentation to Ecology, via email to the Ecology Permit Planner, that maintenance has been performed for the 5 remaining catch basins and 5 remaining stormwater treatment and flow control BMPs/facilities out of compliance as of the April 7, 2023, notice.
2. Perform and submit to Ecology, via email to the Ecology Permit Planner, an assessment of King County’s maintenance program. This will include a gap analysis of staffing resources needed versus staffing resources currently in place and confirm that sufficient funding is guaranteed to support County personnel or hire third party services to perform the permit required maintenance within the prescribed schedule timeline. This assessment should also include a list of all known facilities with migratory bird treaty concerns, establishing a protocol for how the County will schedule

inspections at these facilities so that maintenance can be performed outside the migratory bird window but within the one-year timeframe. This assessment shall be certified in accordance with G19 – *Certification and Signature*.

Long Term Corrective Actions Required:

1. Upon resuming compliance and meeting all short term corrective actions above, King County will submit to Ecology, via email to the Ecology Permit Planner, a progress report each month beginning August 2023 until July 2024, with progress reports due no later than the 20th of each month, to verify S5.C.10.a.ii program compliance. Progress reports shall be certified in accordance with G19 – *Certification and Signature*.
2. King County will submit to Ecology, via email to the Ecology Permit Planner, a quarterly progress report beginning October 2024, January 2025, April 2025 and July 2025, with progress reports due no later than the 20th of each month, to verify S5.C.10.a.ii program compliance. Progress reports shall be certified in accordance with G19 – *Certification and Signature*.

2. Eligibility for Paperwork Violation Waiver and Opportunity to Correct

Under RCW 34.05.110, small businesses are eligible for a waiver of a first-time paperwork violation and an opportunity to correct other violations. We have made no determination as to whether you meet the definition of a “small business” under this section. However, we have determined that the requirements of RCW 34.05.110 do not apply to the violation(s) due to a conflict with federal law or program requirements, including federal requirements that are a prescribed condition to the allocation of federal funds to the State.

3. Failure to Comply With This Order

Failure to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

If King County fails to meet any short term or long term corrective action requirement, or if King County fails to conduct timely maintenance for additional catch basins or stormwater treatment and flow control BMPs/facilities under Special Condition S5.C.10.a.ii through July 31, 2025, Ecology will issue a penalty for each violation unless King County has demonstrated a good faith effort to meet the deadline *and* Ecology concurs that the delay is due to circumstances beyond the Permittee’s control such as denial or delay of access by property owners, or denial or delay of necessary permit approvals.

4. Your Right to Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within thirty (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 43.21B0.001(2).

To appeal, you must do all of the following within thirty (30) days of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see address 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). Email 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:

Department of Ecology

Attn: Appeals Processing Desk
300 Desmond Drive Southeast
Lacey, WA 98503

Pollution Control Hearings Board

1111 Israel RD SW
STE 301
Tumwater, WA 98501

Mailing Addresses:

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

E-Mail Address:

Department of Ecology

Not currently available
(see WAC 371-08)

Pollution Control Hearings Board

Pchb-shbappeals@luho.wa.gov

5. Contact Information

Please direct all questions about this Notice of Violation to:

Roger Chang, Permit Planner
Department of Ecology
Northwest Region Office
PO Box 330316
Shoreline, WA, 98133

Phone: 425-758-5096
Email: roger.chang@ecy.wa.gov

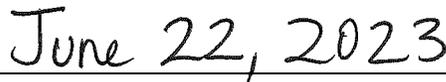
6. More Information

- **Pollution Control Hearings Board Website:**
<https://www.eluho.wa.gov/>
- **Chapter 43.21B RCW – Environmental and Land Use Hearings Office – Pollution Control Hearings Board:**
<https://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice and Procedure**
<https://app.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**
<https://app.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Ecology's Laws, Rules, & Rulemaking Website**
<https://ecology.wa.gov/Footer/rulemaking>

7. Signature



Rachel McCrea
Water Quality Section Manager
Water Quality Program
Northwest Region Office



Date