



Item No. 5h Agreed Order
Date of Meeting December 13, 2011

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000
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NOV 02 2011

Ms. Elizabeth Leavitt
Director, Aviation Planning &
Environmental Programs
Port of Seattle
Seattle-Tacoma International Airport
P.O. Box 68728
Seattle, WA 98168-0727

Agreed Order Docket No.	8755
Site Location	17801 International Boulevard Seattle, WA 98158


Re: Agreed Order

Dear Ms. Leavitt:

Enclosed is Agreed Order number 8755. The enclosed Order may not be appealed by the Port of Seattle. Please return the reviewed and signed Agreed Order to the Department of Ecology, Ed Abbasi, at 3190 160th Avenue SE, Bellevue, WA 98008-5452. Ecology will countersign the Agreed Order, and a copy will be sent to you promptly. The Order will be effective on the date the agreement has been signed by all parties.

If you have any questions concerning the content of the document, please contact Ed Abbasi at (425) 649-7227 or eabb461@ecy.wa.gov.

Sincerely,


Kevin C. Fitzpatrick
Water Quality Section Manager

Enclosure: Agreed Order No. 8755
By certified mail no.: 7008 0150 0003 7591 7847

cc: Larry Altose, Ecology PIO
Jeannie Summerhays, Ecology
Joan Marchioro, Ecology AG
Jerry Shervey, Ecology
Ed Abbasi, Ecology
Cyma Tupas, Ecology
Alice Kelly, Ecology
Central Files: Sea-Tac Airport; WA0024651; WQ 6.4

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PORT OF SEATTLE
AV/ENVIRONMENTAL



**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

IN THE MATTER OF AN)	AGREED ORDER
ADMINISTRATIVE ORDER.)	DOCKET NO. 8755
AGAINST:)	
Port of Seattle)	
Seattle-Tacoma International Airport)	

To: Elizabeth Leavitt
 Director
 Aviation Planning & Environmental Programs
 Port of Seattle
 Seattle-Tacoma International Airport
 P.O. Box 68727
 Seattle, WA 98168-0727

Order Docket No.	8755
Site Location	17801 International Boulevard, Seattle, WA 98158

I. INTRODUCTION

This is an Agreed Order between the Department of Ecology (Ecology) and the Port of Seattle, Seattle-Tacoma International Airport (the Port), to achieve compliance with certain requirements of its National Pollutant Discharge Elimination System (NPDES) Permit No. WA-002465-1 and Chapter 90.48 Revised Code of Washington (RCW) by taking certain actions which are described below to provide for compliance with pH limitations in the Port's NPDES permit.

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).

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 whenever it determines that a person has violated or created a substantial potential to violate any provision of Chapter 90.48 RCW or fails to control the polluting content of waste to be discharged to waters of the state.

The Port 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. The Port agrees not to appeal this Agreed Order.

Nothing in this Agreed Order shall in any way relieve the Port of its obligations to comply with the requirements of its permit. This Agreed Order does not limit Ecology's authority to enforce the provisions of the aforementioned Permit.

III. FINDINGS OF FACT

Ecology's determination that violations have occurred is based on the following facts.

Narrative of Incident

Since July of 2010, discharges from stormwater ponds at Seattle-Tacoma International Airport exceeded the upper pH effluent limit of 8.5 standard units set in Permit Condition S1 of the NPDES Permit No. WA-0024465-1 on a recurring basis at a number of outfalls. These pH exceedances have primarily occurred in outfalls discharging from large stormwater detention ponds. Preliminary investigations conducted by the Port of Seattle indicate that elevated pH can be attributed to algal growth within each pond. Recurrent pH violations have occurred in discharges from outfalls SDW1A, SDW1B, and SDW2. The first pH violation observed at the Pond M appeared to be due to installation of a new concrete manhole, but the latter additional two violations were likely due to algal growth. However, the Port has implemented operational and structural BMPs to eliminate the Pond M exceedances. One isolated upper pH effluent limit exceedance also occurred at outfall SDD06A. However, this violation was isolated and is not believed to have been associated with other reported occurrences. All pH permit limit violations have been promptly reported to Ecology.

pH Exceedances:

The exceedances of the upper pH effluent limit since July 2010 are shown in the table below:

Sea-Tac International Airport (Permit No. WA-0024651): Summary of pH Exceedances During the Period July 2010 through May 2011					
Outfall	Monitoring Period	Units	Limit Type	Value Reported on DMR	Permit Limit
SDW2	7/2/2010	pH Standard Units	Daily Maximum	9.08	< 8.5
SDD06A	9/8/2010	pH Standard Units	Daily Maximum	9.01	< 8.5
SDW2	10/23/2010	pH Standard Units	Daily Maximum	8.77	< 8.5
Pond M	10/24/2010	pH Standard Units	Daily Maximum	9.50	< 8.5
SDW2	1/7/20011	pH Standard Units	Daily Maximum	9.01	< 8.5
SDW2	2/12/2011	pH Standard Units	Daily Maximum	9.22	< 8.5
SDW1A	2/12/2011	pH Standard Units	Daily Maximum	8.77	< 8.5
SDW1B	2/12/2011	pH Standard Units	Daily Maximum	8.91	< 8.5
Pond M	4/13/2011	pH Standard Units	Daily Maximum	8.97	< 8.5
SDW1A	4/27/2011	pH Standard Units	Daily Maximum	8.93	< 8.5
SDW1B	4/27/2011	pH Standard Units	Daily Maximum	8.97	< 8.5
SDW2	4/27/2011	pH Standard Units	Daily Maximum	8.94	< 8.5
Pond M	4/27/2011	pH Standard Units	Daily Maximum	8.91	< 8.5
SDW7A	5/14/2011	pH Standard Units	Daily Maximum	9.03	< 8.5
SDW7B	5/14/2011	pH Standard Units	Daily Maximum	9.46	< 8.5
SDW2	5/14/2011	pH Standard Units	Daily Maximum	9.56	< 8.5

IV. CORRECTIVE ACTIONS & PROGRESS REPORTING

For the reasons detailed above, and in accordance with RCW 90.48.120, IT IS AGREED that the Port shall take the following actions by the dates set forth below. These actions are necessary to satisfy the requirements of certain requirements of its National Pollutant Discharge Elimination System (NPDES) Permit No. WA-002465-1 and Chapter 90.48 Revised Code of Washington (RCW), the Port has participated in defining these actions and the dates by which they shall be completed. The Port 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.

Agreed Order Corrective Actions & Progress Reporting:

To eliminate causes of recurring pH violations from SDW1A, SDW1B, SDW2, and, if necessary, any other stormwater pond that discharges pH above permit limits, the Port of Seattle, Sea-Tac International Airport is ordered to:

1. Upon receipt of this signed Order and until action items #2 through 6 are complete, the Port must:
 - a. Monitor the pH of runoff entering each pond, effluent discharged from each pond, and of the receiving water downstream of each pond's outfall in accordance with the sampling frequency specified in Part II, Condition S1.A of the Port's NPDES permit.
 - b. Submit the results of the pH monitoring on a quarterly basis on the 15th of the month following the previous quarterly sampling period to:

Ed Abbasi, P.E.
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452
2. Prepare and submit a study plan to Ecology for approval no later than December 15, 2011. The plan, at a minimum, shall include the following:
 - a. Location of pH monitoring specified in Agreed Order Action Item 1 as described above.
 - b. Other monitoring that further isolates and characterizes factors that are causing elevated pH in the pond discharges.
 - c. Any immediate operational changes proposed to prevent pH violations.
 - d. A list of potential best management practices (BMPs) for prevention of these pH violations, and an initial assessment of effectiveness of the identified BMPs.

3. Submit an interim progress report summarizing the results of the study plan to Ecology no later than June 30, 2012. The interim report, at a minimum, shall include the following:
 - a. Results of all monitoring completed through May 31, 2012.
 - b. Summary of all pH violations and description of each pond's cause of elevated pH (greater than 8.5 units) during the study period.
 - c. Selected BMPs to prevent pH violations.
4. Implement operational BMPs no later than July 31, 2012.
5. Submit a final report summarizing the results of the study plan to Ecology no later than October 31, 2012. The report, at a minimum, shall:
 - a. Compile all sampling results as specified above and other sampling results of the same outfalls of no less than two years ago.
 - b. Describe the cause of elevated pH (greater than 8.5 units) that is found to occur in each pond.
 - c. Identify recommended BMPs to be implemented for the prevention and eradication of these pH violations along with the basis for the recommendations.
6. Implement and construct necessary structural source control and/or treatment BMPs.
 - a. Complete and submit designs for BMPs no later than December 31, 2012.
 - b. Complete implementation and construction of BMPs no later than October 15, 2013.

V. STIPULATED PENALTIES

If the Port fails to meet the deadlines as set forth in Section IV of this Agreed Order, the Port agrees to pay Ecology a stipulated penalty in the amount of \$1,000 for each action item. Ecology may waive this penalty if the Port has demonstrated a good faith effort to meet the deadline AND Ecology concurs that the delay is attributed to delays in acquiring permits/approvals from governmental agencies, or other unforeseeable causes that are outside of the Port's control.

If stipulated penalties are imposed, Ecology shall notify the Port in writing through a notice of Stipulated Penalty. Stipulated penalties are due within 30 days of receipt of Ecology's notification or, in the event of a dispute, within 30 days of the completion of the dispute resolution process.

VI. AMENDMENTS TO THE AGREED COMPLIANCE SCHEDULE

Amendments to the agreed compliance schedule may be requested for good cause. Extension of the deadline imposed by this Agreed Order is unlikely and 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

Upon completion by the Port of the actions identified in Section IV of this Agreed Order 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 on the Port.

IX. DISPUTE RESOLUTION

If a dispute arises between Ecology and the Port regarding any non-compliance 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, the Port shall serve on Ecology a written Statement of Position. Within thirty (30) days after receipt of the Port's Statement of Position, Ecology shall provide the Port with a final administrative decision.

The position advanced by Ecology shall be considered binding unless the Port elects to pursue arbitration of the dispute. In order to pursue arbitration, the Port must hire an arbitrator approved by Ecology within 30 days of receiving Ecology's administrative decision. The arbitrator shall determine whether Ecology's administrative decision is consistent with this Agreed Order. In making this determination, the arbitrator shall review this Agreed Order, the Statement of Position, Ecology's final administrative decision, and evidence from all parties. The arbitrator will uphold Ecology's administrative decision unless the Port demonstrates, by a preponderance of evidence, that Ecology's administrative decision is inconsistent with this Agreed Order. The decision of the arbitrator shall be binding on all parties.

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, the Port may not appeal this Agreed Order, however, a third party may.

A party other than the Port 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 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.

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 4224 - 6 th Avenue SE Rowe Six, Building 2 Lacey, WA 98503	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Order to:

Ed Abbasi, P.E.
Department of Ecology
Water Quality Program
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

Phone: (425) 649-7227
Email: eabb461@ecy.wa.gov

MORE INFORMATION

Pollution Control Hearings Board Website

www.eho.wa.gov/Boards_PCHB.aspx

Chapter 43.21B RCW - Environmental 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>

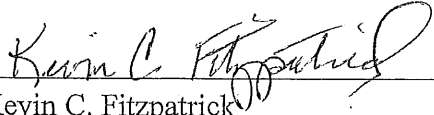
Chapter 34.05 RCW – Administrative Procedure Act

<http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05>

Laws: www.ecy.wa.gov/laws-rules/ecyrcw.html

Rules: www.ecy.wa.gov/laws-rules/ecywac.html

SIGNATURES



Kevin C. Fitzpatrick
Water Quality Section Manager
Department of Ecology
Northwest Regional Office

November 1, 2011

Date

Elizabeth Leavitt
Director
Aviation Planning & Environmental Programs
Port of Seattle
Seattle-Tacoma International Airport

Date

