



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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August 13, 2020

The Honorable Leanne Guier, Mayor
City of Pacific
100 3rd Ave. SE
Pacific, WA 98047

Re: City of Pacific Agreed Order

Order Docket #	18217
Site Location	City of Pacific 100 3rd Ave. SE Pacific, WA 98047

Dear Mayor Guier:

Enclosed is a copy of the signed and effective Agreed Order number 18217. The enclosed Order may not be appealed. The Order is effective as of August 13, 2020.

If you have questions, please contact Danielle DeVoe at 425-649-7036 or by email at Danielle.devoe@ecy.wa.gov

Sincerely,

Rachel McCrea
Water Quality Section Manager
Northwest Regional Office

Enclosure: Agreed Order Docket #18217

Sent by Certified Mail: 9171 9690 0935 0232 6491 73

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF AN)
ADMINISTRATIVE ORDER)
AGAINST:)
The City of Pacific)
City Mayor Leanne Guier)

AGREED ORDER
DOCKET # 18217

To: The Honorable Leanne Guier, Mayor
City of Pacific
100 3rd Ave. SE
Pacific, WA 98047

Order Docket #	18217
Site Location	City of Pacific, 100 3 rd Ave SE, Pacific, WA 98047

I. INTRODUCTION

This Agreed Order between the Department of Ecology (Ecology) and the City of Pacific (City) is entered requiring the City to take certain actions described herein to achieve compliance with the Western Washington Phase II Municipal Stormwater Permit No. WAR045535 (Permit) and therefore compliance with the provisions of the State of Washington Water Pollution Control Law Chapter 90.48 Revised Code of Washington.

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 City has been under Permit coverage (Permit number WAR045535) and subject to the terms and conditions of the Permit since the 2007 Permit was issued. The Permit has been updated and/or amended and reissued in 2012, 2013, 2015 and most recently August 01, 2019. The City has been out of compliance with each version of the Permit.

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

Nothing in this Agreed Order shall in any way relieve the City of its obligations to comply with all the requirements of the Permit. Nor shall anything in this Agreed Order limit Ecology's authority to enforce all the provisions of the Permit.

III. FINDINGS OF FACT

Ecology's determination that a violation has occurred or may occur is based on the following facts. **References in this section of this Agreed Order are to the 2013 Permit under which the violations occurred.**

Stormwater Management Program (SWMP) Plan

The City submitted a SWMP Plan on June 24, 2019 (Due March 31 2019) and another SWMP Plan on March 31, 2020 that did not meet the requirements of Permit condition S5.A.2. It was not organized according to program components in S5.C, nor did the SWMP Plan inform the public of the planned SWMP activities for the upcoming year.

Education and Outreach

The City did not conduct an education and outreach program designed to effect behavior change for a target audience and stormwater BMP in accordance with Permit condition S5.C.1.a.ii.

The City did not conduct activities to measure the understanding and adoption of targeted behavior for at least one targeted audience and to have evaluated changes in adoption of the targeted behaviors by February 02, 2016 in accordance with Permit condition S5.C.1.c.

Public Involvement and Participation

The City did not create opportunities for the public to participate in the decision-making processes involving the development, implementation and update of the City's SWMP (S5.C.2.a).

The City did not post to their website their SWMP Plan and the annual report required under S9.A no later than May 31 each year (S5.C.1.b).

Illicit Discharge Detection and Elimination (IDDE)

The City did not conduct all of the required IDDE-related Permit conditions to implement an ongoing program designed to detect and identify non-stormwater discharges and illicit connections into the City's MS4. The City did not conduct the following Permit components:

- Develop and implement procedures for conducting investigations of the MS4, including screening and methods for identifying potential sources of non-stormwater discharges in accordance with S5.C.3.c.
- Document the IDDE field screening methodology used by the City (S5.C.3.c.i).
- Conduct and keep records of an ongoing training program for staff responsible for implementing IDDE activities (S5.C.3.e).
- Develop and implement procedures for characterizing, tracing and eliminating an illicit discharge (S5.C.3.d).

Controlling Runoff from New Development, Redevelopment and Construction Sites

- The City reports having paper records at their office demonstrating an established inspection program (S5.C.4.b.v). Compliance with this condition includes the presence and records of an established inspection program designed to inspect all sites; including inspection prior to clearing and construction, inspection during active construction, and verification of complete maintenance plans and final inspection upon completion of construction.

Operations and Maintenance (O&M)

- The City's SWMP Plan references practices consistent with the 2005 Stormwater Management Manual of Western Washington (SWMMWW) which is not compliant with the requirement to implement maintenance standards that are as protective, or more protective, of facility function than those specified in the v2014 amended SWMMWW (S5.C.5.a). However, City code title 24.08.100 states the City adopted the April 24, 2016 Edition of King County's Surface Water Design Manual, and the 2016 Edition of the King County Stormwater Pollution Prevention Manual.
- The City was initially uncertain, but now states they have paper records of annual inspections of municipally owned or operated permanent stormwater treatment and flow control BMPs/Facilities (S5.C.5.b). The City's paper records are not currently accessible due to the COVID-19 pandemic.
- The City was initially uncertain, but now state they have paper reports and records of inspection and maintenance or repair activities conducted by the City (S5.C.5.i). Paper records are not currently accessible due to the COVID-19 pandemic.

IV. CORRECTIVE ACTIONS

The City will implement the following corrective actions and submit the following deliverables to Ecology on or before the deadlines specified. Corrective Actions taken by the City before, and after, the Effective Date of this Agreed Order will count toward meeting this requirement. References in this section of this Agreed Order are to the current Permit, effective August 1, 2019 unless otherwise noted.

1. Coordination among Permittees

Coordination mechanisms among entities covered under a municipal stormwater NPDES permit are intended to encourage coordinated stormwater-related policies, programs and projects within adjoining or shared areas (S5.A.5.a). To promote coordination with municipal partners, the City shall:

- a. Participate in local Phase II Coordinators Group meetings (occur quarterly). Participation may be from any City staff or contracted staff that will report meeting information back to City representatives responsible for implementing the City's stormwater program(s). Report meeting attended (group name, date, topics covered) and name(s) of participants on the City's behalf with quarterly reports.
- b. Participate in the Stormwater Outreach for Regional Municipalities (**STORM**) group. Participation may be from any City staff or contractor that will report meeting information back to City representatives responsible for implementing the City's stormwater program(s). "**Stormwater Outreach for Regional Municipalities (STORM)** is a coalition of 83 Western Washington cities and counties that have worked together since 2007 to achieve our NPDES Stormwater permit obligations. By working together, our region-wide and local stormwater outreach efforts are more effective, consistent, and cost efficient." Report meeting attended (date, topics covered) and name(s) of participants on the City's behalf with quarterly reports.

2. SWMP Plan

The SWMP Plan is intended to both be an internal guidance document and outreach to the public about what the City is planning to do to implement their municipal stormwater management plan obligations in the upcoming calendar year. The City shall submit a SWMP Plan with their annual report, **due by March 31, 2021**, that is compliant with the Permit in accordance S5.A.2.

3. Education and Outreach

The City shall develop a strategy and schedule for a target audience and BMP behavior change in accordance with the 2019 Permit (S5.C.2.a.ii(c)3).

The City shall develop an education and outreach campaign tailored to effect behavior change in at least one target audience for at least one BMP in accordance with Permit requirement S5.C.2.ii(a). The campaign shall follow social marketing practices and methods, similar to community-based social marketing, in accordance with S5.C.2.ii(c). To prepare for the **February 1, 2021** Permit deadline to have a strategy and schedule developed for a target audience and target BMP as required under Special Condition S5.C.2.ii, the following program elements are due to Ecology in writing with quarterly reports by the given deadlines:

- a. Identify Target audience and Target BMP (October 15, 2020 quarterly report).
- b. Identify Partners (October 15, 2020 quarterly report).
- c. Identify existing water quality data and information (October 15, 2020 quarterly report).
- d. Identify the demographics and potential barriers for target audience (October 15, 2020 quarterly report).
- e. Develop a strategy and schedule for campaign (January 15, 2021 quarterly report).
- f. Develop a program evaluation plan (January 15, 2021 quarterly report).

Accomplishing the above tasks consistent with Permit requirements by their respective due dates will help the City comply with relevant 2019 Permit requirements, including beginning implementation of the developed strategy by April 1, 2021.

4. Public Involvement and Participation

The City shall demonstrate annually in their SWMP Plan their efforts to create opportunities for the public to participate in the decision-making process involving the development, implementation and update of the City's SWMP (S5.C.3.a).

5. Illicit Discharge Detection and Elimination (IDDE)

The City shall train staff responsible for implementing the City's IDDE program and shall implement the following:

- a. Have internal monthly check in meetings with staff who are primarily responsible for IDDE program implementation to discuss the City's status on meeting the minimum performance measures required by the Permit (S5.C.5). Submit meeting agenda, meeting notes and sign in sheets (or other attendance record) to Ecology with quarterly reports (electronic copies/scans are acceptable).
- b. Have copies of the City's IDDE Standard Operating Procedures (SOPs) available to all field staff responsible for field screening no later than October 15, 2020. Submit SOPs to Ecology with October 15, 2020 quarterly report.
- c. Have staff who are primarily responsible for IDDE program implementation, such as inspectors and/or maintenance crew, participate in at least one IDDE field screening "ride along" with two different municipalities (2 ride-alongs per staff person); to be completed by October 15, 2021 Include a short description in the quarterly report of who participated on which dates, and a summary of what was conducted during the ride along, and with which municipality.
- d. Include with quarterly reports, a written description of training taken by staff and copies of sign in sheets (or other attendance record) with staff person's name and responsibility and dates of training.

6. Controlling Runoff from New Development, Redevelopment and Construction Sites

The City will submit the following records related to controlling runoff from new and redevelopment, including but not limited to inspection activities, conducted within the

reporting quarter. Include the previous 6 months' worth of documentation for the first quarterly report. The following records shall be submitted:

- a. Submit in writing the follow records of site plan review:
 - i) The number of new development and redevelopment project applications submitted to the City requiring a site plan review.
 - ii) A short description of each project approved by the City requiring site plan review. Include in the description: the square footage of existing hard surface coverage, square footage of new plus replaced hard surfaces, the square footage of land disturbing area, and the minimum technical requirements (pursuant to Permit Appendix 1) the project is subject to.
 - iii) Include in writing the current status of review of each site plan (examples: under review, corrections required, approved, etc.) and include attachments of the City's comments and corrections required communicated to each applicant during the review process.
- b. Records of inspections of permitted development sites prior to clearing and construction (S5.C.6.c.ii). Include attachments of comments and corrections required made by the City to the project proponent.
- c. Records of inspections of permitted development sites during construction, per S5.C.6.c.iii, to verify the proper installation and maintenance of required erosion and sediment controls. Include attachments of comments, and corrections required.
- d. Records of inspections of maintenance activities for stormwater treatment and flow control BMPs/facilities and catch basins in new residential development sites as needed and required per S5.C.6.c.iv.
- e. Records of inspections of permitted development sites upon completion of construction. (S5.C.6.c.v).
- f. Records of enforcement actions taken by the City, including inspection reports, warning letters, notices of violations, and other enforcement records (S5.C.6.c.vii).

7. Operations and Maintenance (O&M)

Submit with quarterly reports the following operations and maintenance records for stormwater facilities regulated by the City (per S5.C.7.b), and stormwater facilities owned or operated by the City (per S5.C.7.c):

- a. Submit records of inspection of each stormwater BMPs/facility; include the number of inspections conducted since last quarterly report. (S5.C.7.b&c)
- b. Submit records of maintenance actions taken, required and/or scheduled for stormwater BMPs/facilities including dates and location and actions taken for each stormwater BMP/facility. (S5.C.7.b&c)
- c. Records of inspections of catch basins and inlets (S5.C.7.c.iii).
- d. Records of catch basin maintenance conducted and/or scheduled (S5.C.7.c.iii).

V. REPORTING

The City shall submit quarterly reports to Ecology. The quarterly reports are due by: October 15, 2020; January 15, 2021; April 15, 2021; July 15, 2021; and October 15, 2021.

Reports can be submitted via email to the contact listed in section XIV of this Order, or through the Water Quality Web Portal.

Quarterly reports shall document the status and details of each of the action items listed in Section IV of this Agreed Order. Quarterly reports shall include the date by which the actions required during that reporting period were completed.

The City shall immediately notify Ecology in writing (by letter signed by G19 signatory) of any occurrence which may result in noncompliance with the requirements of this Agreed Order. Such notifications shall state the nature of the potential noncompliance, the reason(s) therefore and the actions taken by the City to address the potential noncompliance.

VI. STIPULATED PENALTIES

If the City fails to meet a Corrective Action completion deadline listed above, or to submit a complete quarterly report, Ecology may assess, and the City agrees to pay, a stipulated penalty in the amount of one thousand dollars (\$1,000) for each day past the due date until the requirement has been met. Ecology may waive any stipulated penalty if the City 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 City's control.

If stipulated penalties are imposed, Ecology shall notify the City 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.

VII. AMENDMENTS TO THE AGREED COMPLIANCE SCHEDULE

Extension of the deadlines imposed by this Agreed Order is unlikely and will only be granted when requests for extensions are timely submitted in writing in advance, 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. Such amendments will become effective on the date of execution by the last signatory.

VIII. EFFECTIVE DATE

This Order is effective on the date of execution by the last signatory.

IX. TERMINATION OF THE AGREED ORDER

Upon completion by the City 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 City. The Notice of Compliance will be provided to the City in writing within 60 days following final submittal by the City and Ecology's concurrence that the Order has been completed.

X. DISPUTE RESOLUTION

If a dispute arises between Ecology and the City regarding any alleged 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, the City shall provide to Ecology a written Statement of Position. Within thirty (30) days after receipt of the City's Statement of Position, Ecology shall provide the City with a final administrative decision appealable to the PCHB under RCW 43.21B and WAC 371-08.

XI. ENFORCEMENT

In addition to the stipulated penalties set out in Section VI. above, failure to comply with this Agreed Order or with any permit condition not addressed in this Agreed Order may result in permit noncompliance, which may result in the issuance of civil penalties of up to \$10,000 per day per violation, or other actions, whether administrative or judicial, to enforce compliance with the Permit and RCW 90.48. Ecology's issuance of an enforcement order or penalty are appealable under RCW 43.21B and WAC 371-08.

XII. THIRD PARTY RIGHT TO APPEAL

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

A party other than the City 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 a party must do both of the following within 30 days of the date of receipt of this Order:

- File an 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 the appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

Other requirements in Chapter 43.21B RCW and Chapter 371-08 WAC may apply. Appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320.

XIII. 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 1111 Israel Road SW STE 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

XIV. CONTACT INFORMATION

Please direct all questions about this Order to:

Danielle DeVoe
Department of Ecology, Water Quality Program
Northwest Regional Office
3190 160th Ave. SE
Bellevue, WA 98008-5452

Phone: 425-649-7036
Email: danielle.devoe@ecy.wa.gov

XV. 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>

XVI. SIGNATURES



Leanne Guier
City of Pacific, Mayor

8/10/2020
Date



Rachel McCrea
Water Quality Section Manager
Northwest Regional Office
Department of Ecology

8/13/2020
Date