

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

IN THE MATTER OF AN)	AGREED ORDER AND PENALTY
ADMINISTRATIVE ORDER)	DOCKET NO. 9566
AGAINST:)	
King County)	
Department of Natural Resources & Parks)	

To: Christie True, Director
Department of Natural Resources & Parks
King County
201 S Jackson Street, Suite 600
Seattle, WA 98104-3855

Agreed Order and Penalty Docket No.	9566
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I. INTRODUCTION

This is an Agreed Order and Penalty between the Department of Ecology (Ecology) and King County (County) to achieve compliance with the Phase I Municipal Stormwater Permit (Phase I Permit) No. WAR04-4501 issued under the Water Pollution Control Act, Chapter 90.48 RCW and Chapters 173-221 and 173-220 WAC by taking certain actions which are described below to resolve issues related to the County's compliance with Special Condition S8.D, Stormwater Monitoring, of the Phase I Permit.

II. RECOGNITION OF ECOLOGY'S JURISDICTION

This Agreed Order and Penalty 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.

RCW 90.48.260 designates Ecology as the state water pollution control agency for all purposes of the Federal Clean Water Act and grants complete authority to administer a National Pollutant Discharge Elimination System (NPDES) permit program.

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.

King County agrees to undertake all actions required of it by the terms and conditions of this Agreed Order and Penalty and not to contest Ecology's jurisdiction and authority to administer this Agreed Order and Penalty. King County agrees not to appeal this Agreed Order and Penalty.

Nothing in this Agreed Order and Penalty shall in any way relieve King County of its obligations to comply with the requirements of its Phase I Permit. Nor shall anything in this Agreed Order and Penalty limit Ecology's authority to enforce the provisions of the aforementioned Phase I Permit.

III. FINDINGS OF FACT

Ecology's determination that a violation has occurred or may occur is based on the following facts.

The Phase I Permit, issued on January 17, 2007; effective on February 16, 2007; and modified on June 17, 2009, and September 1, 2010, contains requirements for monitoring of stormwater discharges (Special Condition S8). On March 29, 2012, the County notified Ecology in accordance with General Condition G20 that, as of January 2012, the County had suspended stormwater discharge monitoring required under Special Condition S8.D. After County and Ecology representatives discussed the County's options for resolving the noncompliance, the County resumed its stormwater discharge monitoring program on June 15, 2012.

IV. COMPLIANCE SCHEDULE

For the reasons detailed above, and in accordance with RCW 90.48.120, IT IS AGREED that King County shall take the following actions by the dates set forth below. These actions are necessary to satisfy the requirements of Special Condition S8.D of the Phase I Permit. These actions are consistent with the requirements contained in Special Condition S8.C.1.a of the Phase I Permit effective September 1, 2012, through July 31, 2013. Where actions are listed below that are not included in Special Condition S8.C.1.a of the Phase I Permit effective September 1, 2012, through July 31, 2013, King County has participated in defining these actions and the dates by which they shall be completed.

- 1) The County shall conduct stormwater monitoring in accordance with Special Condition S8.D, except the provisions related to seasonal first-flush toxicity testing.
- 2) No later than November 1, 2012, the County shall have submitted an update or addendum to the County's November 2010 Quality Assurance Project Plan (QAPP) for Special Condition S8.D stormwater monitoring. The QAPP update/addendum shall detail the new monitoring and reporting schedule and any other relevant activities.
- 3) Stormwater monitoring under this Agreed Order and Penalty is complete when King County has completed nine (9) months of monitoring (beginning June 15, 2012) that conforms to Special Condition S8.D as modified by Section IV.1 above.

V. PROGRESS REPORTING

King County shall provide progress reports to Ecology on a quarterly basis identifying the status for each of the actions listed in Sections IV, VI, and VII of this Agreed Order and Penalty. Progress reports shall include a short description of the actions, the date by which the actions were completed, a description of any potential schedule delays, and an updated budget-tracking spreadsheet that itemizes expenditures. The first progress report must be submitted by January 15, 2013, and quarterly thereafter (e.g., April 15, 2013; July 15, 2013; October 15, 2013; January 15, 2014). The final quarterly progress report will document the completion of the actions listed in Sections IV, VI, and VII of this Agreed Order and Penalty.

VI. CIVIL PENALTY

Ecology has assessed a penalty against King County in the amount of \$36,300 for the County's noncompliance with Special Condition S8.D, Stormwater Monitoring, of the Phase I Permit. King County must pay \$36,300 penalty within thirty (30) days from the effective date of this Agreed Order and Penalty. Make the payment payable to *Department of Ecology*. Please include the penalty docket number, 9566, on your payment.

Mail payment to:

Department of Ecology
Cashiering Unit
PO Box 47611
Olympia, WA 98504-7611

VII. ENVIRONMENTAL RESTORATION

In addition to the \$36,300 penalty, King County shall spend a minimum of \$108,900 on an environmental project as specified below. This project will control noxious weeds and plant native vegetation in approximately 120,000 square feet of riparian areas alongside Soos Creek in WRIA 9 and Patterson Creek in WRIA 7 to provide shade and improve habitat, and also install and monitor two vegetated floating islands in Hicklin (aka Hicks or Garrett) Lake to absorb excess nutrients. King County shall 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.

- 1) No later than December 14, 2012, the County shall submit to Ecology a detailed budget-tracking spreadsheet for the environmental project tasks specified below. The spreadsheet shall include budgeted staff time and associated hourly rates, equipment/supply costs, and other project expenses that total a minimum of \$108,900. The spreadsheet shall provide the mechanism to track the project expenditures to ensure the entire sum is paid. The County shall submit the spreadsheet, completed to reflect the project expenditures for the previous quarter, with each progress report listed in Section V.
- 2) No later than February 28, 2013, the County shall develop and submit to Ecology the planting plans for Soos Creek and Patterson Creek riparian restoration tasks.

- 3) No later than April 30, 2013, the County shall obtain all necessary permits for the Hicklin Lake floating islands. If King County does not obtain all permits by April 30, 2013, King County may request from Ecology an extension of the deadlines for tasks (6) and (8) by the number of days after April 30, 2013, that the permits are actually obtained. Ecology will grant the request if King County demonstrates it has taken all necessary steps to timely obtain the permits, including timely submission of completed applications.
- 4) No later than May 31, 2013, the County shall complete planting native vegetation along Soos Creek and Patterson Creek.
- 5) From June 1, 2013, through September 30, 2013, the County shall maintain the plants along Soos Creek and Patterson Creek.
- 6) No later than July 31, 2013, the County shall complete installation of the floating islands in Hicklin Lake.
- 7) No later than November 30, 2013, the County shall replant vegetation, if needed, to ensure 80 percent survivorship along Soos Creek and Patterson Creek.
- 8) No later than November 30, 2013, the County shall complete effectiveness monitoring of the floating islands in Hicklin Lake. The County shall submit the effectiveness monitoring results to Ecology within 30 days of the data validation.

VIII. STIPULATED PENALTIES

If King County fails to meet any of the deadlines and/or requirements of this Agreed Order and Penalty, King County agrees to pay Ecology a stipulated penalty in the amount of \$36,300. Ecology may waive this penalty if King County has demonstrated a good faith effort to meet the deadline AND Ecology concurs that the delay is attributed to unforeseeable causes that are outside of King County's control.

If stipulated penalties are imposed, Ecology shall notify King County 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.

The imposition of stipulated penalties does not replace the County's obligation to take certain actions as set forth in Sections IV and VI of this Agreed Order and Penalty to resolve issues related to the County's compliance with Special Condition S8.D, Stormwater Monitoring, of the Phase I Permit.

IX. AMENDMENTS TO THE AGREED COMPLIANCE SCHEDULE

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

X. EFFECTIVE DATE

This Agreed Order and Penalty is effective on the date the agreement has been signed by both parties.

XI. TERMINATION OF THE AGREED ORDER

Upon submittal of the final quarterly report indicating completion by King County of the actions identified in this Agreed Order and Penalty, Ecology will have 60 days to issue a Notice of Compliance. Upon issuance of the Notice of Compliance, the requirements of this Agreed Order and Penalty shall be deemed to be fulfilled and this Agreed Order and Penalty shall terminate.

XII. DISPUTE RESOLUTION

If a dispute arises between Ecology and King County regarding any noncompliance with this Agreed Order and Penalty, 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, King County shall serve on Ecology a written Statement of Position. Within thirty (30) days after receipt of King County's Statement of Position, Ecology shall provide King County with a final administrative decision.

The position advanced by Ecology shall be considered binding.

XIII. ENFORCEMENT

Failure to comply with this Agreed Order and Penalty 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 and Penalty.

XIV. THIRD PARTY RIGHT TO APPEAL

By signing this Agreed Order and Penalty, King County may not appeal this Agreed Order and Penalty, however, a third party may.

A party other than King County has a right to appeal this Agreed Order and Penalty to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Agreed Order and Penalty. 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 Agreed Order and Penalty:

- File your appeal and a copy of this Agreed Order and Penalty 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 Agreed Order and Penalty 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 Agreed Order and Penalty. Stay requests must be submitted in accordance with RCW 43.21B.320.

XV. 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

XVI. CONTACT INFORMATION

Please direct all questions about this Agreed Order and Penalty to:

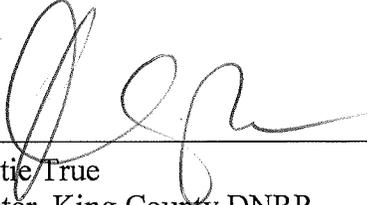
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

Rachel McCrea, Municipal Stormwater Specialist
Phone: 425-649-7223
Email: rachel.mccrea@ecy.wa.gov

XVII. MORE INFORMATION

- **Pollution Control Hearings Board Website**
www.eho.wa.gov/Boards_PCHB.aspx
- **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>
- **Laws:** www.ecy.wa.gov/laws-rules/ecyrcw.html
- **Rules:** www.ecy.wa.gov/laws-rules/ecywac.html

XVIII. SIGNATURES



Christie True
Director, King County DNRP

12/3/2012

Date



Kelly Susewind, P.E., P.G.
Water Quality Program Manager
Water Quality Program
Headquarters

12/12/12

Date

