

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF)
COMPLIANCE BY)
Snohomish County)

AGREED ORDER NO. 6688

To: Aaron Reardon, County Executive
Snohomish County
3000 Rockefeller Avenue
M/S 407
Everett, WA 98201-4046

For the site located at: The Snohomish County Municipal Separate Storm Sewer System (MS4)
Phase I Municipal Stormwater Permit No. WAR04-4502

I. INTRODUCTION

This Agreed Order is entered into by the Washington State Department of Ecology (Ecology) and Snohomish County (County), hereinafter referred to collectively as "the Parties." The purpose of this Agreed Order is to establish the schedule to bring Snohomish County into compliance with Special Condition S5.C.5 of the National Pollutant Discharge Elimination System (NPDES) Phase I Municipal Stormwater Permit No. WAR04-4502 (Permit). The Permit is issued under the Water Pollution Control Act, Chapter 90.48 Revised Code of Washington (RCW) and Chapters 173-221 and 173-220 Washington Administrative Code (WAC). By signing this Agreed Order, the County agrees to comply with the compliance schedule contained herein and to waive any appeal rights it may have with regards to this Agreed Order.

Nothing in this Agreed Order shall in any way relieve the County of its obligations under the Permit.

Likewise, nothing in this Agreed Order shall in any way limit Ecology's authority to enforce the provisions of the Permit.

II. RECOGNITION OF ECOLOGY'S JURISDICTION

Ecology's authority to enter into this Agreed Order includes but is not limited to the following:

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(2) authorizes Ecology to issue Administrative Orders requiring compliance whenever it determines that a person has violated or has created a substantial potential to violate any provision of Chapter 90.48 RCW or has failed 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 Ecology complete authority to administer the NPDES Permit Program.

The County agrees to not contest Ecology's jurisdiction and authority to administer this Agreed Order.

III. BACKGROUND

The Department of Ecology's determination that a violation of NPDES Permit No. WAR04-4502 has occurred is based on the following facts:

The Permit, issued on January 17, 2007, and effective on February 16, 2007, contains requirements for controlling runoff from new development, redevelopment, and construction sites (Special Condition S5.C.5). The County submitted a draft package of ordinances and other documents on February 13, 2008, in accordance with the deadline specified in the Permit. Ecology and County staff met to discuss the draft submittal on March 17 and April 2, 2008. County staff provided revised and supplemental information on April 4 and May 1, 2008. Additional phone conversations also occurred. Ecology sent a comment letter to the County on May 13, 2008, indicating that the County must make additional revisions to its proposed program in order to comply with Special Condition S5.C.5 of the Permit.

County and Ecology representatives (managers and staff) met on June 16, 2008, to discuss how to move forward. The attendees reached a mutual understanding that the adjustment and variance decision-making processes and criteria specified in the Permit must be applied to all aspects of Snohomish County's Drainage Manual and other regulations that relate to thresholds, definitions, minimum requirements, site planning processes, and best management practice design and selection criteria associated with facility function and performance. On July 2, 2008, Ecology transmitted detailed comments regarding the County's February 13, 2008, submittal to the County. The County responded in writing on August 25, 2008, that it would revise its proposal to address Ecology's comments. The Permit deadline for the County to adopt the new ordinances was October 23, 2008.

On September 2, 2008, the County notified Ecology under General Condition G20 of the Permit, Notice of Non-Compliance, that the County would be unable to adopt the regulations required under Special Condition S5.C.5 by October 23, 2008. Despite the ongoing efforts of County representatives, a revised draft package of ordinances and other documents has not yet been submitted to Ecology for review and approval.

IV. COMPLIANCE SCHEDULE

The Parties have worked together to create the following compliance schedule:

- 1) The County will submit a revised package of draft code and engineering and stormwater manual documents that are fully responsive to Ecology's July 2, 2008, detailed comments to Ecology no later than April 24, 2009.
- 2) The County will meet with Ecology to present the revised package within two weeks following its submittal.

- 3) Ecology will complete a review of the County's submittal and provide comments to the County by May 29, 2009. The County and Ecology will resolve any remaining comments by June 19, 2009.
- 4) The County will complete and submit a final draft package of code and engineering and stormwater manual documents that address Ecology's comments no later than June 26, 2009.
- 5) The County agrees to expedite the adoption process of the code and rules as much as possible, while still meeting state and local regulatory requirements pertaining to legislative actions and rule adoption. The expedited process will include review by the Prosecuting Attorney, review by the Executive Branch, and Planning Commission and County Council briefings, meetings, and hearings. The Planning Commission will host joint briefings and public hearings with the County Council in an effort to reduce the number of subsequent County Council briefings and hearings. The schedule will be expedited to the maximum extent feasible, such that the majority of the effort associated with the County's formal adoption process as outlined in the description of the expedited process is completed by September 30, 2009. Ecology recognizes that the County Council needs to focus much of its time on budgetary issues during October and November 2009, and has accommodated this fact in the compliance schedule. The Snohomish County Department of Planning and Development Services will reduce its implementation period from 90 to 60 days to compensate for the budgetary downtime.
- 6) The County will adopt Ecology-approved codes no later than January 29, 2010. The codes, together with engineering and stormwater manual documents, will become effective no later than April 1, 2010.

V. PROGRESS REPORTING

The County agrees to provide monthly progress reports to Ecology during execution of items 4 and 5 in Section IV. Monthly progress reports will be submitted by the 10th of each applicable month. Such reports shall be signed by the Director of the Snohomish County Department of Planning and Development Services.

The County agrees to immediately notify Ecology of any occurrence which may result in noncompliance with the requirements of this Agreed Order. Such notification will state the nature of the potential noncompliance, the reason(s) for the occurrence, and the actions taken by the County to address the potential noncompliance.

VI. AMENDMENTS TO THE COMPLIANCE SCHEDULE

Amendments to the compliance schedule in Section IV may be requested for good cause. Extension of deadlines imposed by this Agreed Order may be agreed to by the Parties only when requests for extensions are submitted in writing and in a timely fashion and where good cause exists for an extension. Good cause includes, but is not limited to, the County's inability to meet a deadline where the inability is caused by Ecology's failure to meet a deadline for providing comments on draft documents.

To be effective, all amendments must be signed by the person with signature authority for each Party and must be attached to this Agreed Order.

VII. EFFECTIVE DATE

This Agreed Order is effective as of the date that it has been signed by both of the Parties.

VIII. DISPUTE RESOLUTION

If a dispute arises between Ecology and the County regarding any term within this Agreed Order, the Parties shall attempt to resolve the dispute through 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 sixty (60) days, the County shall serve on Ecology a written Statement of Position. Within thirty (30) days thereafter, Ecology shall provide the County with a final administrative decision and that decision shall not be subject to appeal.

IX. TERMINATION OF THE AGREED ORDER

Upon completion of the actions identified in Section IV and after Ecology issues a Notice of Compliance, the requirements of this Agreed Order will be deemed fulfilled and the Agreed Order will be terminated.

X. ENFORCEMENT

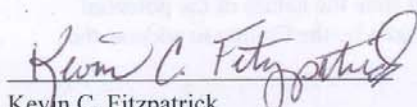
Nothing in this Agreed Order shall be construed as preventing Ecology from taking any enforcement action in response to a violation of this Agreed Order.

Failure to comply with this Agreed Order 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 the terms of this Agreed Order.



Aaron Reardon
County Executive
Snohomish County

5-06-09
Date



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

April 21, 2009
Date

COUNCIL USE ONLY	
Approved:	<u>5.4.09</u>
Docfile:	<u>D-1</u>