

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

IN THE MATTER OF AN)	AGREED ORDER
ADMINISTRATIVE ORDER)	DOCKET NO. 11638
AGAINST:)	
City of Everett)	

To: Ray Stephanson, Mayor
City of Everett
2930 Wetmore Avenue
Everett, WA 98201-4067

Order Docket No.	11638
Site Location	City of Everett Water Pollution Control Facility and Collection System

I. INTRODUCTION

This is an Agreed Order between the Department of Ecology (Ecology) and the City of Everett (Everett) to achieve compliance with Everett's National Pollutant Discharge Elimination System (NPDES) Permit No. WA0024490 (Permit), Chapter 90.48 Revised Code of Washington (RCW) and Chapter 173-245 Washington Administrative Code (WAC) by taking certain actions which are described below to ensure that all remaining combined sewer overflow (CSO) reduction projects are completed to achieve the greatest reasonable reduction of CSOs at the earliest possible date.

II. RECOGNITION OF ECOLOGY'S JURISDICTION

This Agreed Order is issued pursuant to the authority vested in Ecology by Chapter 90.48 RCW and the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. sec 1311, et seq. 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 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.

Everett 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. Everett agrees not to appeal this Agreed Order.

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

III. FINDINGS OF FACT

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

- RCW 90.48.480 directs Ecology to work with local governments to develop reasonable plans and compliance schedules for the greatest reasonable reduction of combined sewer overflows.
- CSO Reduction Plans are comprehensive plans that describe how a municipality will attain the greatest reasonable reduction of CSOs at the earliest possible date per WAC 173-245-020(7).
- WAC 173-245-020 requires municipalities to submit CSO Reduction Plans to Ecology for review and approval by January 1, 1988.
- Everett submitted their original CSO Control Plan on November 2, 1987, and Ecology approved it on March 15, 1988. That plan identified a series of projects to be implemented over 30 years that would reduce overflows to the reasonable minimum threshold. Projects included a system of new lift stations and interceptors to convey an increased volume of combined sewage to Everett's Water Pollution Control Facility (WPCF) along with expanding treatment capacity at the WPCF.
- As required by its NPDES permit and WAC 173-245-090(2), Everett submitted an update to the CSO control plan in 2013. In 2014 the City submitted a Comprehensive Sewer Plan, and a new CSO Control Plan Update that replaced the 2013 document. The Comprehensive Sewer Plan and the 2014 CSO Control Plan Update modified control projects and strategies from the previously approved 1987 CSO Control Plan. The modifications were needed due to changes in project priorities based on improved flow data from the collection system and the availability of previously unforeseen opportunities to implement strategies that would provide significant environmental benefits.
- Everett currently has 13 CSO outfalls with 3 CSO outfalls considered to be controlled. The 2014 CSO Control Plan Update proposes a series of projects that are designed to bring six additional outfalls into control by 2017 and will bring all outfalls into control by 2027. Everett's proposal to complete CSO reduction projects for some of the outfalls in the system after 2017 is not consistent with the 2017 deadline for full completion in the approved 1987 CSO Control Plan. After reviewing the alternatives, Ecology concludes that extending the completion date for certain outfalls until December 31, 2027, is warranted as the projects provide for significant, long-term environmental benefit and if the end date is incorporated into a legally enforceable document, such as an Agreed Order. Ecology will continue to use compliance scheduled in the NPDES permit to enforce completion dates for projects that the 2014 CSO Plan Update identified for completion by 2017.

Basis of Order:

RCW 90.48.480 requires that a compliance schedule will be a condition of any waste discharge permit issued or renewed after January 1, 1988. These compliance schedules are generally limited to include only those milestones and projects that must be completed during the term of the permit, 5 years. Planned projects that fall outside the permit term are incorporated into future permits.

Projects that remain outside the term of the present permit are not captured in an enforceable document. For CSO Reduction Plan projects outside the permit's compliance schedule, an order is an appropriate enforcement mechanism to ensure compliance with the law. Under WAC 173-245-090(2)(c), Ecology may incorporate such a schedule into an administrative order.

Everett's *2014 Comprehensive Sewer Plan and 2014 CSO Control Plan Update* contain a number of CSO reduction projects that have projected completion dates of 2027. Upon approval of those plans, Ecology acknowledges the year 2027 is the "earliest possible date" for the purpose of compliance with the law for those specific CSO outfalls.

IV. CORRECTIVE ACTIONS [or COMPLIANCE SCHEDULE]

In accordance with RCW 90.48.120(2) IT IS AGREED, that Everett must take the following actions by the date (milestone) set forth below. These actions are necessary to satisfy the requirements of Chapters 173-245 WAC. Everett has participated in defining these actions and the milestone by which they shall be completed. Everett shall also submit 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.

- In order to meet the requirements of WAC 173-245-020(22), Everett shall complete construction of CSO reduction projects identified in the *2014 CSO Control Plan Update* or future amendments submitted by Everett and approved by Ecology to reduce CSOs from the remaining 10 uncontrolled CSO basins down to an average of no more than one overflow per outfall per year by December 31, 2027. Future CSO Reduction Plan Amendments may not result in a compliance date later than December 31, 2027.

V. PROGRESS REPORTING

Everett shall immediately notify Ecology 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 to address the potential noncompliance.

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 Everett 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 Everett.

IX. 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. Everett reserves the right to appeal Ecology’s decision to seek penalties and the amount of any penalties sought.

X. THIRD PARTY RIGHT TO APPEAL

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

A party other than Everett 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 both of 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.

XI. 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

XII. CONTACT INFORMATION


Please direct all questions about this Order to:

Amy Jankowiak
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452
425-649-7195
amy.jankowiak@ecy.wa.gov

XIII. 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

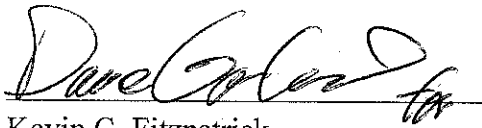
XIV. SIGNATURES


Ray Stephanson
Mayor
City of Everett

attest: 
Deputy City Clerk

7-22-2015

Date

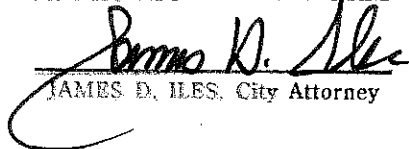


Kevin C. Fitzpatrick
Water Quality Section Manager
Department of Ecology
Northwest Regional Office

8-6-2015

Date

APPROVED AS TO FORM


JAMES D. ILES, City Attorney

1900



RETURN TO
EVERETT CITY CLERK
2930 Wetmore
Everett, WA 98201

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

JUN 26 2015

Mr. Ray Stephanson, Mayor
City of Everett
2930 Wetmore Avenue
Everett, WA 98201-4067

Order Docket No.	11638
Site Location	City of Everett Water Pollution Control Facility and Collection System

Re: Agreed Order City of Everett Combined Sewer Overflow System Reduction Plan
Implementation

Dear Mayor Stephanson:

Enclosed is Agreed Order number 11638. The enclosed Order may not be appealed by the City of Everett. Please return both original copies of the reviewed and signed Agreed Order to Amy Jankowiak at the Department of Ecology, Northwest Regional Office, at the address above. I will countersign the Agreed Order, and one of the originals 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 Amy Jankowiak at 425-649-7195 or amy.jankowiak@ecy.wa.gov.

Sincerely,

Kevin C. Fitzpatrick
Water Quality Section Manager
Northwest Regional Office

Enclosure: Agreed Order No. 11638

By Certified Mail No.: 7008 1140 0000 2359 9517

cc: Dave Davis, Public Works Director, Everett
Mark Sadler, Maintenance Superintendent
Jim Miller, Engineering Superintendent
Souhiel Nasr, Principal Engineer
Grant Moen, Senior Engineer
Mark Henley, Municipal Unit Supervisor, Ecology
Amy Jankowiak, Municipal Compliance Specialist, Ecology
Shawn McKone, Facility Manager, Ecology
Josh Baldi, Northwest Regional Director, Ecology
Larry Altose, PIO, Ecology
Ron Lavigne, Attorney General's Office for Ecology
Central Files: City of Everett STP; Permit No. WA0024490; WQ 6.4



