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**SUPREME COURT  
OF THE STATE OF WASHINGTON**

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CITY OF TACOMA, BIRCH BAY WATER AND  
SEWER DISTRICT, KITSAP COUNTY, SOUTHWEST  
SUBURBAN SEWER DISTRICT, and ALDERWOOD  
WATER & WASTEWATER DISTRICT,

Respondents,

v.

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY,

Petitioner.

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**RESPONDENTS' ANSWER IN OPPOSITION TO  
PETITION FOR REVIEW**

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## I. INTRODUCTION

Respondents own and operate municipal wastewater treatment plants (WWTPs) discharging into Puget Sound pursuant to Clean Water Act National Pollutant Discharge Elimination System (NPDES) permits issued by the Department of Ecology. In January 2019, as part of a new effort to regulate nitrogen discharge, Ecology directed its permit writers to require caps or loading limits for total inorganic nitrogen (TIN) in future WWTP permits based on the amount of TIN a plant currently discharged to Puget Sound. Rather than promulgating this directive using notice and comment rulemaking required by the state Administrative Procedure Act (APA), Ecology announced its commitment to require the new limits in a letter to an environmental group. Ecology then proceeded to implement its directive, incorporating the TIN limits into a new general permit applicable to all municipal WWTPs discharging into Puget Sound, and individual permits as they came up for renewal.



Ecology meets none of the RAP 13.4(b) criteria for discretionary review. The Court of Appeals applied established law when it affirmed the superior court and held that Ecology violated the APA because its new TIN cap directive constituted a rule as defined by the APA in RCW 34.05.010(16). *City of Tacoma v. Dep't of Ecology*, \_\_\_ Wn. App. 2d \_\_\_, 535 P.3d 462 (2023). The Court of Appeals correctly held that the directive met both elements of the rule definition. First, it held that the new TIN cap rule was a non-discretionary directive “generally applicable” to the entire class of municipal WWTPs discharging nitrogen into Puget Sound. Second, it held that adding new TIN load limits as enforceable conditions in Respondents’ permits altered the qualifications and requirements for those permits.

This case does not present an issue of substantial public interest. The Court of Appeals decision does not prevent Ecology from regulating nitrogen discharge. It simply ensures that the public, including the WWTPs required to operate

pursuant to NPDES permits, have the opportunity for meaningful participation in the process of developing such regulations.

## **II. RESTATEMENT OF THE ISSUES**

1. Does Ecology's directive to its staff to require annual nutrient load limits or caps in future NPDES permits for Puget Sound municipal WWTPs operating pursuant to such permits constitute a "directive of general applicability," thus meeting the first element of the APA definition of a rule in RCW 34.05.010(16)?
2. Does Ecology's directive to its staff to require annual nutrient load limits or caps in future NPDES permits for Puget Sound municipal WWTPs operating pursuant to such permits meet the second element of the APA rule definition in RCW 34.05.010(16), where Ecology imposed such limits as enforceable permit conditions in individual and a general permit applicable to all municipal WWTPs discharging into Puget Sound?

### **III. RESTATEMENT OF THE CASE**

#### **A. The Clean Water Act and NPDES Permit Program.**

The Clean Water Act, 33 U.S.C. §§ 1251-1388, prohibits the discharge of pollutants from a point source without an NPDES permit. 33 U.S.C. §§ 1311(a), 1342(a). In Washington, Ecology has the delegated responsibility for administering the NPDES permit program. 33 U.S.C. § 1342(b); RCW 90.48.260. Dischargers must apply to Ecology for a permit authorizing their discharge, which expire every five years. 40 C.F.R. §§ 122.21(a), 122.46(a); WAC 173-220-040, 173-220-180(1). Permittees with expiring permits must reapply for permit renewal. 40 C.F.R. §§ 122.21(d), 122.41(b); WAC 173-220-180(2).

A NPDES permit specifies water quality criteria and the required methods to apply it. WAC 173-201A-260(3). Ecology has adopted and codified water quality standards (WQS), chapter 173-201A WAC, approved by EPA. 33 U.S.C. § 1313(c); 40 C.F.R. §§ 131.20, 131.21. Among other

requirements, NPDES permits must impose effluent limitations ensuring that the state WQS will not be violated. 33 U.S.C. §§ 1311(b)(1)(C), 1342(a)-(b), 1362(11); 40 C.F.R. § 122.44; WAC 173-226-070, 173-201A-510(1). All permits must incorporate conditions requiring all known, available, and reasonable technology (AKART). RCW 90.48.010, 90.48.520; WAC 173-201A-020. *See also* RCW 90.52.040, 90.54.020(3)(b).

Noncompliance by a permittee with any condition of an NPDES permit is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. 33 U.S.C. § 1342(b)(1)(C). Dischargers are also potentially subject to enforcement actions and third-party citizen suits seeking injunctive relief and civil penalties of up to \$64,618 a day for permit violations. 33 U.S.C. §§ 1319, 1365; 40 C.F.R. § 19.4.

Dischargers operating under a state NPDES program may be required to operate under either an individual permit,

specific to that discharger's facility, or a general permit, covering multiple dischargers within a designated category and geographical area. *See* 40 C.F.R. §§ 122.2, 122.28(a); WAC 173-226-020.

B. Respondents' WWTPs and Individual Permits.

Respondents are a county, city, and three special purpose districts owning and operating public sewer systems and associated WWTPs discharging into Puget Sound. Each provides an essential public service with the goal of providing cost effective wastewater treatment for their ratepayers while maintaining and enhancing water quality.

Collectively, Respondents own and operate a total of nine treatment plants, serving thousands of industrial, residential, and commercial customers. For example, Respondent City of Tacoma operates two WWTPs discharging to Commencement Bay. Its Central Plant serves approximately 195,420 residential, industrial, and commercial customers within Tacoma, Fife, Fircrest, Ruston, and Pierce County. CP 453-99, 1118, 1030. Its

North End Plant serves more than 53,000 customers. CP 415-52, 1118, 1030. As another example, Respondent Kitsap County owns and operates four sewer systems; its Sewer Utility Division currently has 13,000 residential and commercial customers. CP 391, 500, 540, 584. Kitsap County also contracts sewer service to treat sewage from US Navy Bangor Base, US Navy Keyport Base, the City of Poulsbo, and the Suquamish Tribe. CP 350-51 ¶ 5.6; CP 369 ¶ 5.6.

Planning and implementing updates to the operations and treatment systems at Respondents' WWTPs involves a complicated long-term process to prioritize efforts, engage in planning and engineering subject to Ecology review and approval, obtain funding, and construct facility upgrades.

Each of Respondents' WWTPs operates pursuant to long term coverage under an individual NPDES permit specific to that facility. Respondents' individual permits authorize each plant's entire discharge and require nitrogen monitoring, but do not specifically regulate nitrogen discharge. Among other

things, the permits require that Respondents maintain service capacity within each plant's service area, including capacity to serve proposed and permitted development projects, as well as anticipated growth and infill development to meet the goals of land use comprehensive plans adopted under the state Growth Management Act (GMA), Ch. 36.70A RCW. *See e.g.*, CP 428, 469. Respondents' facilities are an integral part of every GMA comprehensive plan, which must include capital facilities plans forecasting and accommodating future growth. *See* RCW 36.70A.070(1), (3), and (4).

Respondents also manage their plants, as required under their permits, in accordance with the planning and engineering requirements of RCW 90.48.110 and chapter 173-240 WAC. This includes submitting to Ecology for approval, and subsequently maintaining and updating, general sewer plans under RCW 90.48.110 and WAC 173-240-050. Those plans require an evaluation of population trends and estimated growth. WAC 173-240-050(3)(e).

C. Ecology Issues the TIN Cap Rule.

In the Spring of 2017, Ecology launched the Puget Sound Nutrient Source Reduction Project (PSNSRP) to develop a new plan to reduce nutrient loads potentially contributing to decreased dissolved oxygen (DO) in Puget Sound. AR-00000001-23. The PSNSRP established a forum which first met in April 2018 and focused on potential regulation of nutrient sources discharged from municipal WWTPs. AR-00000109-34.

In November of 2018, Northwest Environmental Advocates (“NWEA”) filed a petition for rulemaking with Ecology pursuant to RCW 34.05.330(1). AR-00000231. The petition asked Ecology to revise its discharge standards and effluent limitations to define AKART as tertiary treatment for municipal sewage dischargers into Puget Sound and its tributaries. AR-00000231.

On January 11, 2019, Ecology sent a letter to NWEA formally rejecting the petition, on the grounds that requiring all Puget Sound municipal WWTPs to install tertiary treatment



would be unreasonable and cost prohibitive. AR-00000335-37.

Ecology did, however, commit to the following in the letter:

[E]cology *will*, through the individual permitting process:

1. *Set nutrient loading limits at current levels from all permitted dischargers in Puget Sound and its key tributaries to prevent increases in loading that would continue to contribute to Puget Sound's impaired status. . . .*

Ecology *will* use current permit reissuance schedules to include these requirements in [NPDES] permits by mid-2019. . . *This will include individual water quality permits, and may include a general permit, rulemaking, or other mechanisms identified through the PSNRP [sic] process.*

AR-00000336 (emphasis added). This language in the January 2019 letter (“TIN Cap Letter”) constitutes the rule at issue in this appeal: Ecology’s commitment to require annual nutrient loading limits or caps based on current levels for all municipal WWTPs discharging into Puget Sound, to be implemented in reissued individual permits and potentially also a general permit.

Before Ecology sent the TIN Cap Letter to NWEA its employees expressed concern that the letter’s commitments

constituted a rule necessitating APA notice and comment rulemaking. In a December 2018 email reacting to a circulated draft of the letter Shawn McKone, a Municipal Facility Manager in Ecology's Northwest Regional Office—Water Quality Program commented:

“[The]‘commitments’ we’re making for a near-term permitting process violate the Administrative Procedures Act. . . We cannot just arbitrarily make a significant change like this without going through a public process – in other words, rulemaking. . . The only legal way for us to move forward is to reopen WAC 173-221 or create a new administrative rule to define nutrient removal standards for Puget Sound.

CP 1050-51. Ecology employee Greg Zentner similarly described the letter as “committing to establish performance-based effluent limits for nitrogen in permits when we re-issue them (for facilities discharging to Puget Sound or its tributaries).” CP 1060-61.

Ecology also made clear to the regulated community its commitment in the TIN Cap Letter to impose nutrient load limits on Puget Sound WWTPs. At a February 2019 public meeting Ecology discussed its rejection of the NWEA Petition

and the “resulting commitments” it had made in the Letter, including “Commitment 1: Nutrient Loading Cap.” CP 1062, 1077, 1080, 1081. Ecology announced it was “committing to beginning the process with permitting now.” CP 1086.

D. Ecology Implements the TIN Cap Rule.

In January of 2020, Ecology formally announced its intention to fulfill its TIN Cap Letter commitments and proceed with an annual TIN loading limit to be enforced through a new Puget Sound Nutrient General Permit (PSNGP) and dischargers’ individual permits. CP 1160-86 and 969-90, 1174-75. It then proceeded to do so.

First, Ecology included the limits in the PSNGP, issued in draft on June 26, 2021, and in final form on December 1, 2021. PSNGP Fact Sheet (Fact Sheet) at 11.<sup>1</sup> The permit went

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<sup>1</sup> The PSNGP and Fact Sheet are attached as Appendix A and B to this brief and to Respondents’ Court of Appeals brief. They are available online at <https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Nutrient-Permit#issuance> (last visited November 15, 2023). As they did before the superior court and Court of Appeals, Respondents ask this Court to take

into effect on January 1, 2022, and required that the 58 WWTPs subject to the permit apply for coverage by April 1, 2022, in addition to the individual permits pursuant to which each WWTP already discharged.<sup>2</sup> PSNGP at 7-9.

The PNSGP imposed TIN loading limits on permittees through “action levels,” set at each permittee’s current annual TIN load, the exceedance of which trigger corrective actions. PSNGP at 11-13, 15-16, 18-20, 22-23, 32-42; Fact Sheet at 40-41. “Dominant” dischargers exceeding the action level must take action to reduce annual TIN loading by at least 10% below the level. PSNGP at 15-16 (Condition S4.D). “Moderate” dischargers exceeding the level must also take corrective actions to reduce their TIN loading. PSNGP at 22-23

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judicial notice of these publicly available documents formally issued by Ecology. *See Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709, 725-26, 189 P.3d 168 (2008).

<sup>2</sup> The PSNGP was appealed to the Pollution Control Hearings Board, which entered a partial stay of the permit and continued the appeals pending resolution of this appeal.

(Condition S5.D). The PSNGP also carves out a category of “small” dischargers who collectively represent just 1% of domestic point source nitrogen load to Puget Sound. Fact Sheet at 34, 40. As with calculation of the action levels themselves, Ecology determined the categories by relying on existing monitoring data for average daily TIN loads for each of the 58 WWTPs. Fact Sheet at 38.

Any failure to comply with the PSNGP’s corrective action requirements, including “discharge of TIN at a level that exceeds the action level identified and authorized by” the permit is a violation of the permit’s terms and conditions. PSNGP at 47 (Condition G1).

Second, Ecology began to include TIN load limits in WWTP individual permits as they came up for renewal. *See* CP 811, 823, 839-42, 847, 869-71 (Fact Sheet); CP 912, 917-18, 922-23 (Permit) (Birch Bay); CP 739, 767-70, 775, 809 (Fact Sheet); CP 873, 877-78, 882-83 (Permit) (Big Lake). These individual permits became effective March 1, 2021, and expire

in 2026. CP 873, 912.

E. Respondents' APA Rule Challenge

Respondents filed a petition for review under 34.05.570(2), alleging that Ecology unlawfully promulgated the TIN Cap Rule and two other purported rules in violation of the APA. The Thurston County Superior Court held all three rules invalid and declared that Ecology could not impose annual TIN loading limits on WWTPs discharging into Puget Sound “without complying with statutory rulemaking procedures.” CP 1483. The court remanded to Ecology “for consideration of the immediate adoption of temporary emergency rules while regular rule-making proceeds.” CP 1483.

Instead of rulemaking, Ecology appealed. The Court of Appeals affirmed the superior court in part, holding that the TIN Cap Letter met the APA rule definition, and that the nitrogen load limits imposed on Respondents in the PSNGP and individual permits are unlawful.

#### IV. ARGUMENT

A. The Court of Appeals Decision Does Not Conflict with Decisions of this Court or Court of Appeals.

RCW 34.05.375 requires that an agency comply with the APA rulemaking procedures set out in RCW 34.05.310-95. An agency's failure to do so is grounds for invalidation of the rule. RCW 34.05.570(2)(c); *Faylor's Pharmacy v. Dep't of Social and Health Servs.*, 125 Wn.2d 488, 497, 886 P.2d 147 (1994). The purpose of APA-required rulemaking procedures is to give notice to the public of a proposed rule and allow it to comment on the proposal. *Hunter v. Univ. of Wash.*, 101 Wn. App. 283, 293, 2 P.3d 1022 (2000) (citing *Hillis v. Dep't of Ecology*, 131 Wn.2d 373, 399, 932 P.2d 139 (1997)). The label that an agency puts on its action is not determinative of whether it constitutes a rule. *McGee Guest Home, Inc. v. Dep't of Social and Health Serv.*, 142 Wn.2d 316, 322, 12 P.3d 144 (2000).

The Washington APA defines a "rule" as:

"Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction;

(b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. . . .

RCW 34.05.010(16).

The definition contains two elements. *Northwest Pulp & Paper Ass'n v. Dep't of Ecology*, 200 Wn.2d 666, 672, 520 P.3d 985 (2022). First, a rule must be an “order, directive, or regulation of general applicability”; second, a rule must fall into at least one of five enumerated categories (a) through (e). *Id.* at 672-73. If a court finds that the purported rule does not satisfy the first element, it need not address whether it satisfies the second. *Id.* at 676.

The Court of Appeals correctly held that the TIN Cap Letter meets the APA definition of a rule, and thus that Ecology’s failure to use notice and comment rulemaking



violated the APA. The decision is entirely consistent with prior rulings of this Court.

First, the Court of Appeals correctly held that the letter meets the first element of the rule definition, because it is a “directive” “of general applicability.” *City of Tacoma*, 535 P.3d at 477-78. To meet this element a rule may be an “order,” “directive,” or “regulation”; the rule definition “goes beyond orders and regulations of general applicability and includes ‘directives,’ presumably referring to anything which is directive in nature, whether labeled a bulletin, an announcement, or a manual.” William R. Andersen, *The 1988 Washington Administrative Procedure Act – An Introduction*, 64 Wash. L. Rev. 781, 790 (1989).

Agency action is a rule “of general applicability” “where the challenge is to a policy applicable to all participants in a program, not its implementation under a single contact or assessment of individual benefits . . .” *Failor’s Pharmacy*, 125

Wn.2d at 495 (citing *Simpson Tacoma Kraft Co. v. Dep't of Ecology*, 119 Wn.2d 640, 648, 835 P.2d 1030 (1992)).

In *Simpson*, this Court held that Ecology's adoption of a new numeric WQS for dioxin was a rule of general applicability because the standard applied to all NPDES permittees discharging dioxin into state waters, rather than to just one permittee. *Simpson*, 119 Wn.2d at 643-44, 647-48. Similarly, in *Failor's Pharmacy*, DSHS changes to Medicaid reimbursement payment schedules for prescription drugs were a rule of general applicability because the policy applied to all Medicaid prescription provider program participants, not just to a single participant. *Failor's Pharmacy*, 125 Wn.2d at 495-96.

The Court of Appeals correctly applied *Simpson* and *Failor's Pharmacy*, holding that the TIN Cap Letter is a directive of "general applicability" because it applies to the entire class of municipal WWTPs discharging into Puget Sound pursuant to NPDES permits. *City of Tacoma*, 535 P.3d at 477. As with the WQS in *Simpson*, the TIN Cap Letter commits

permit writers to imposing nutrient loading limits not just in one discharger's permit, but rather in NPDES permits "from all permitted dischargers in Puget Sound and its key tributaries. . . ."  
" AR-0000336.

The decision below does not conflict with this Court's decision in *Northwest Pulp & Paper*. Pet. for Rev. at 21-27. In *Northwest Pulp*, this Court held that a new section of Ecology's Water Quality Permit Writer's Manual addressing PCBs test methods was not a rule of "general applicability" because the manual did not require the use of any particular test method and thus did not uniformly apply a new testing standard on all PCBs dischargers. *Northwest Pulp*, 200 Wn.2d at 673-75. Focusing closely on the language of the manual, the Court held that it merely provided guidance, giving permit writers broad discretion to choose on a case-by-case basis not only which PCBs test method to include in a permit, but also whether to require PCBs monitoring at all. *Id.* at 674-75. The Court noted

that the manual also gave permit writers “the option of exploring an alternative [testing] process altogether.” *Id.* at 675.

The TIN Cap Letter contains no such language and does not give individual permit writers discretion to decide on a case-by-case basis whether to include TIN limits in permits. The letter states that Ecology “*will*, through the individual permitting process, set nutrient loading limits. . .” and “*will* use current permit reissuance schedules *to include these requirements in [NPDES] permits by mid-2019*” and that these and other requirements “*will* include individual water quality permits, and may include a general permit, rulemaking, or other mechanisms. . . .” AR-00000336 (emphasis added).

Moreover, Ecology did, in fact, include TIN limits as enforceable permit conditions in the PSNGP and individual permits. In stark contrast, in *Northwest Pulp* the record contained no clear evidence that permit writers ever required the use of the new test methods in permits. *Northwest Pulp*, 200 Wn.2d at 675.

Ecology attempts to read “discretion” into the TIN Cap Letter are unconvincing. First, Ecology asserts that its directive did not apply to the entire universe of WWTPs for which NWEA sought rulemaking. Pet. for Rev. at 23-24. However, whatever scope of rulemaking NWEA may have requested in its Petition is irrelevant. It is Ecology’s *response* to that Petition – the nondiscretionary commitments in the TIN Cap Letter to impose nutrient load limits “from all permitted dischargers in Puget sound and its key tributaries” -- that is the directive at issue. That directive was clearly implemented in the PSNGP, which applies to “the 58 publicly owned domestic wastewater treatment plants (WWTPs) discharging into Washington Waters of the Salish Sea” and identifies the individual NPDES permit pursuant to which each of the covered WWTP already operates. PSNGP at 7 (Condition S1.A) and Table 3.

Ecology further argues that permit writers had the “discretion” to decide whether to include nitrogen limits in the PSNGP because Ecology carved out a “small” discharger

category in the permit, collectively representing just 1% of nitrogen discharged by WWTPs into Puget Sound, upon which it did not impose numeric nutrient caps. Pet. for Rev. at 24. All PSNGP permittees, however, are subject to water-quality based action levels; for small dischargers, they are in the form of narrative effluent limits, which require a nitrogen optimization plan and report, which trigger corrective action requirements if the discharger's TIN load increases. PSNGP at 29. That the PSNGP has slight variations in its terms imposing TIN limits on categories of permittees does not render discretionary Ecology's directive to staff to require limits. In fact, by definition, a general permit applies to an entire class of point sources with substantially similar permit terms and conditions. See Fact Sheet at 12.

Most importantly, *Simpson* held that the fact that an agency directive may result in individual variations between program participants does not render the directive less "generally applicable." *Simpson*, 119 Wn.2d at 647-48. This is

precisely what the Court of Appeals addressed in its footnote regarding “uniform applicability,” correctly pointing out that agencies may not avoid APA rulemaking requirements by creating slight variations in the rule’s application. *See City of Tacoma*, 535 P.3d at 473 n.5.

The Court of Appeals also correctly rejected Ecology’s argument, based on nonbinding dicta in *Northwest Pulp*, that a rule must be a “regulation” to fall within the APA rule definition because rules must have “independent regulatory effect.” Pet. for Rev. at 25-27. *See City of Tacoma*, 535 P.3d at 478. The Court of Appeals correctly noted that Ecology’s interpretation of *Northwest Pulp* would effectively overrule *Simpson*. In *Simpson* – just as with the nitrogen limits at issue here – the dioxin standards became independently enforceable only after they were written into permits as enforceable permit conditions.

Moreover, in *Northwest Pulp*, this Court considered only the first element of the rule definition, holding that the manual

section was not “generally applicable” and thus was not a rule. *Northwest Pulp*, 200 Wn.2d at 676. This Court did not address the second element of the definition, whether the manual section fell into one of the definition’s five enumerated categories (a) through (e). *Id.* The *Northwest Pulp* language relied upon by Ecology relates solely to the second element of the definition, as it quotes from and discusses the first of the enumerated rule categories, RCW 34.05.010(16)(a), rules “(a) the violation of which subjects a person to a penalty or administrative sanction . . . .” *Northwest Pulp* at 676. Because this Court resolved *Northwest Pulp* based solely on the first element of the rule definition its short discussion of the second element is not necessary to the decision and is not binding. Statements in a case that do not relate to an issue before the court and are unnecessary to decide the case constitute *obiter dictum* and need not be followed. *Malted Mousse, Inc. v. Steinmetz*, 150 Wn.2d 518, 531, 79 P.3d 1154 (2003) (quoting



*State v. Potter*, 68 Wn. App. 134, 149 n.7, 842 P.2d 481 (1992)).

Nor does the opinion below conflict with *Sudar v. Dep't of Fish & Wildlife Comm'n*, 187 Wn. App. 22, 347 P.3d 1090 (2015). Pet. for Rev. at 27. Unlike the TIN Cap directive at issue here, *Sudar* involved a “policy statement” outlining “guiding principles” and a “vision statement,” issued by a Commission with no regulatory or enforcement authority. *Sudar*, 187 Wn. App. at 26-27, 31-33.

To satisfy the second element of the APA rule definition the directive must fall into one of the five categories set out in RCW 34.05.010(16)(a) through (e). Although Ecology’s Issue No. 2 appears to address the definition’s second element, the petition contains no supporting argument. Accordingly, Ecology has waived the issue. *See In re Detention of A.S.*, 138 Wn.2d 898, 922 n.10, 982 P.2d 1156 (1999). Nevertheless, Respondents address the second element of the RCW 34.05.010(16) rule definition here.

The Court of Appeals correctly held that the TIN Cap Letter falls within rule category RCW 34.05.010(16)(c). In *Failor's Pharmacy*, the benefit of the Medicaid program ran to the Medicaid patient, and enjoyment of that benefit was altered by the change in reimbursement schedules, which “constitute[d] additions to and refinements of reimbursement methodology, not mere applications of existing regulations.” *Failor's Pharmacy*, 125 Wn.2d at 495-98. Here, issuance of an NPDES permit is a benefit or privilege conferred by law because Respondents are required to obtain such permits in order to operate. *See* 33 U.S.C. §§ 1311(a), 1342; RCW 90.48.162, 90.48.170, 90.48.180. Ecology committed to imposing new TIN load limits as enforceable permit conditions in Respondents' permits, altering the qualifications and requirements for those permits. The new permit requirements do more than merely require that WWTPs comply with existing water quality standards; rather, they contain new numeric levels

specific to nitrogen discharge, “which has never been subject to direct regulation until now.” *City of Tacoma*, 535 P.3d at 479.

Because the Court of Appeals held that the TIN Cap Letter falls within RCW 34.05.010(16)(c), it did not reach the issue of whether the directive also falls within the RCW 34.05.010(16)(a) “penalties and administrative sanctions” category. It is Respondents’ position that the directive falls into both categories.

In *Simpson*, this Court held that Ecology’s dioxin standards fit within RCW 34.05.010(16)(a) because they would subject permittees to punishment if they did not comply with the standard once written into permits as numeric effluent limits and permit conditions. *Simpson*, 119 Wn.2d at 642, 644, 647-48. As in *Simpson*, Ecology has adopted the TIN Cap limits as enforceable permit conditions, exposing Respondents to penalties and administrative sanctions.

Finally, the Court of Appeals decision does not conflict with *Northwest Environmental Advocates v. Dep’t of Ecology*,

No. 54810-1-II, 2021 WL 2556573 (Wash. June 22, 2021) (unpublished).<sup>3</sup> That case involved NWEA’s APA appeal of Ecology’s decision to reject NWEA’s rulemaking petition. The court held that Ecology was not required to adopt the effluent limits proposed by NWEA and that Ecology had complied with RCW 34.05.330(1), the process requirements for such petitions, which include stating the reasons for denial of the petition and, “where appropriate,” the alternative means by which the agency will address the petitioner’s concerns. *Id.* at \*6-13. The court did *not* make a blanket decision that the TIN Cap Letter complied with the APA. The issue of whether the letter’s directive to impose nutrient limits in future permits constituted a “rule” was not before the court.

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<sup>3</sup> Court of appeals unpublished opinions have no precedential value and are not binding on this Court. *See* GR 14.1.

B. This Appeal Does Not Present an Issue of Substantial Public Interest.

The Court of Appeals opinion will not require Ecology to engage in rulemaking every time it issues a permit requiring AKART. *See* Pet. for Rev. at 3-4, 28-29. The court merely held that Ecology must follow the APA and use rulemaking procedures before directing permit writers to include new restrictions in NPDES permits applying to an entire class of permittees. This clear standard is precisely the holding of *Simpson*, decided by this Court thirty years ago.

Complying with the opinion below will not constrain Ecology's ability to carry out its mission and purpose. Ecology's actions here involve much more than merely exercising its statutory authority to ensure that WWTPs comply with existing WQS. Existing WQS do not regulate or set numeric levels for nitrogen discharges. *City of Tacoma*, 535 P.3d at 479. Nitrogen has never been directly regulated by Ecology. *Id.* The TIN Cap Letter is part of an entirely new permitting strategy; a strategy that requires, pursuant to the

APA, notice to the regulated community and the opportunity for meaningful participation.

## **V. CONCLUSION**

For the foregoing reasons, Respondents respectfully request that this Court deny the Petition for Review.

This document contains 4,937 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted this 15th day of November 2023.

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## Appendix A

Issuance Date: December 1, 2021  
Effective Date: January 1, 2022  
Expiration Date: December 31, 2026

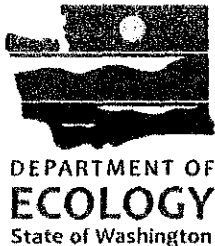
# PUGET SOUND NUTRIENT GENERAL PERMIT


## A NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM AND STATE WASTE DISCHARGE GENERAL PERMIT

**State of Washington**  
**Department of Ecology**  
Olympia, Washington

In compliance with the provisions of  
The State of Washington Water Pollution Control Law  
Chapter 90.48 Revised Code of Washington  
and  
The Federal Water Pollution Control Act  
(The Clean Water Act)  
Title 33 United States Code, Section 1251 et seq.

Until this permit expires, is modified or revoked, Permittees that have properly obtained coverage under this general permit are authorized to discharge nutrients in accordance with the conditions, which follow.



  
\_\_\_\_\_  
Vincent McGowan, P.E.  
Water Quality Program Manager  
Washington State Department of Ecology

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## SUMMARY OF PERMIT REPORT SUBMITTALS

Refer to the Special and General Conditions within this permit for additional submittal requirements. Appendix A provides a list of definitions. Appendix B provides a list of acronyms.

**Table 1. Summary of Permit Report Submittals**

Permit Section	Submittal	Frequency	First Submittal Date
S2.A.1	Permit Application (Notice of Intent)	Once	For new Permittees: No later than 90 days following permit issuance
S4.C	Nitrogen Optimization Report for Dominant Loaders	Annually	March 31, 2023
S4.D	Corrective Action Engineering Report	As necessary	
S4.E	Nutrient Reduction Evaluation for Dominant Loaders	1/permit cycle	December 31, 2025
S5.C	Nitrogen Optimization Report for Moderate Loaders	Annually	March 31, 2023
S5.D	Corrective Action Engineering Report	As necessary	
S5.E	Nutrient Reduction Evaluation for Moderate Loaders	1/permit cycle	December 31, 2025
S6.B	Nitrogen Optimization Report for Small Loaders	1/permit cycle	March 31, 2026
S5.D	AKART Evaluation for Small Loaders	1/permit cycle	December 31, 2025
S9.A	Discharge Monitoring Reports (DMRs)	Monthly	Within 15 days of applicable monitoring period
G2	Notice of Change in Authorization	As necessary	As necessary
G7	Application for Permit Renewal	1/permit cycle	No later than 180 days before expiration
G20	Reporting Anticipated Non-Compliance	As necessary	As necessary

**Table 2. Summary of Required On-Site Documentation**

<b>Permit Condition(s)</b>	<b>Document Title</b>
S9.B.3	Original Sampling Records (Field notes, as applicable and Laboratory Reports)
S9.G.1.a	Copy of Permit Coverage Letter
S9.G.1.b	Copy of Puget Sound Nutrient General Permit
S9.G.1.c	Copies of Discharge Monitoring Reports
S9.G.1.d	Copies of attachment to the Annual or Single NOP Reports (as applicable)
S9.G.1.e	Copy of the Nutrient Reduction Evaluation or AKART Analysis (as applicable)

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<sup>1</sup> <https://ecology.wa.gov/About-us/Accountability-transparency/Our-website/Accessibility>



## SPECIAL CONDITIONS

### S1. PERMIT COVERAGE

#### A. COVERAGE AREA AND ELIGIBLE DISCHARGES

This Puget Sound Nutrient General Permit (PSNGP) applies to the 58 publically owned *domestic wastewater* treatment plants (WWTPs) discharging into *Washington Waters of the Salish Sea*, except for federal and Tribal lands and waters as specified in Special Condition S1.D. Table 3 identifies the WWTPs covered by this permit along with their individual *NPDES* permit number for reference. This proposed permit assigns a category to each WWTP based on their percentage of the *total inorganic nitrogen (TIN)* load currently discharged to Washington Waters of the Salish Sea. Special Condition S4 lists permit conditions and limits for the WWTPs with the **dominant (D) TIN loads**. Special Condition S5 lists the conditions and limits for the WWTPs with **moderate (M) loads**. Special Condition S6 lists the conditions and limits for the WWTPs with **small (S) loads**.

**Table 3. List of Domestic WWTPs Discharging to Puget Sound**

Wastewater Treatment Plant	Individual NPDES Permit Number	Category
Alderwood Sewage Treatment Plant (STP)	WA0020826	S
Anacortes WWTP	WA0020257	M
Bainbridge Island WWTP	WA0020907	S
Birch Bay Sewage Treatment Plant (STP)	WA0029556	M
Boston Harbor STP	WA0040291	S
Bremerton WWTP	WA0029289	M
Clallam Bay WWTP	WA0024431	S
Clallam Bay Corrections Center WWTP	WA0039845	S
Coupeville WWTP	WA0029378	S
Eastsound Orcas Village WWTP	WA0030911	S
Eastsound Sewer and Water District WWTP	WA0030571	S
Edmonds STP	WA0024058	M
Everett STP	WA0024490	D
Fisherman Bay STP	WA0030589	S
Friday Harbor STP	WA0023582	S
Gig Harbor WWTP	WA0023957	S
Hartstene Pointe STP	WA0038377	S
King County, Brightwater WWTP	WA0032247	D

Wastewater Treatment Plant	Individual NPDES Permit Number	Category
King County, South WWTP	WA0029581	D
King County, Vashon WWTP	WA0022527	S
King County, West Point WWTP	WA0029181	D
Kitsap County, Central Kitsap WWTP	WA0030520	M
Kitsap County, Kingston WWTP	WA0032077	S
Kitsap County, Manchester WWTP	WA0023701	S
Kitsap County Sewer District #7 Water Reclamation Facility (WRF)	WA0030317	S
La Conner STP	WA0022446	S
Lake Stevens Sewer District WWTP	WA0020893	M
Lakota WWTP	WA0022624	M
Langley WWTP	WA0020702	S
Lighthouse Point WRF/Blaine STP	WA0022641	M
LOTT Budd Inlet WRF	WA0037061	M
Lynnwood STP	WA0024031	M
Marysville STP	WA0022497	M
McNeil Island Special Commitment Center WWTP	WA0040002	S
Midway Sewer District WWTP	WA0020958	M
Miller Creek WWTP	WA0022764	M
Mt Vernon WWTP	WA0024074	M
Mukilteo Water and Wastewater District WWTP	WA0023396	S
Oak Harbor STP	WA0020567	S
Penn Cove WWTP	WA0029386	S
Pierce County Chambers Creek Regional WWTP	WA0039624	D
Port Angeles WWTP	WA0023973	M
Port Orchard WWTP (South Kitsap WRF)	WA0020346	M
Port Townsend STP	WA0037052	S
Post Point WWTP (Bellingham STP)	WA0023744	D
Redondo WWTP	WA0023451	M
Rustlewood WWTP	WA0038075	S
Salmon Creek WWTP	WA0022772	M

Wastewater Treatment Plant	Individual NPDES Permit Number	Category
Sekiu WWTP	WA0024449	S
Sequim WRF	WA0022349	S
Shelton WWTP	WA0023345	S
Skagit County Sewer District 2 Big Lake WWTP	WA0030597	S
Snohomish STP	WA0029548	M
Stanwood STP	WA0020290	S
Tacoma Central No. 1 WWTP	WA0037087	D
Tacoma North No. 3 WWTP	WA0037214	M
Tamoshan STP	WA0037290	S
WA Parks Larrabee WWTP	WA0023787	S

**B. LIMITS ON COVERAGE**

Coverage under this General Permit does not include discharges from WWTPs not listed in Table 3. Coverage under this General Permit also excludes all discharges from non-WWTP outfalls.

This permit does not cover the following discharges:

1. Discharges from facilities located on “Indian Country” as defined in 18 U.S.C. §1151, except portions of the Puyallup Reservation as noted below. Indian Country includes:
  - a. All land within any Indian Reservation, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation. This includes all federal, tribal, and Indian and non-Indian privately owned land within the reservation.
  - b. All off-reservation Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.
  - c. All off-reservation federal trust lands held for Native American Tribes.

Puyallup Exception: Following the *Puyallup Tribes of Indians Land Settlement Act of 1989*, 25 U.S.C. §1773, the permit does apply to land within the Puyallup Reservation except for discharges to surface water on land held in trust by the federal government.
2. Discharges from activities operated by any department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government of the United States, or another entity, such as a private contractor, performing industrial activity for any such department, agency, or instrumentality.

3. Discharges from any industrial or privately owned domestic wastewater treatment plant into Washington waters of the Salish Sea.
4. Discharges from domestic WWTPs entering tributary watersheds to Washington waters of the Salish Sea, upstream of Ecology ambient monitoring stations.

## **S2. APPLICATION FOR COVERAGE**

### **A. OBTAINING PERMIT COVERAGE**

1. The **owner/operator** seeking coverage under this permit must apply for permit coverage within the following time limits.
  - a. Existing facilities are WWTPs in operation prior to the effective date of this permit, January 1, 2022 and are identified in Table 3.
  - b. The owner/operator of an existing domestic wastewater treatment plant must submit a complete application for coverage no later than ninety (90) **days** after the issuance date of this permit. Upon submittal of a complete application for coverage (also called a **Notice of Intent** or NOI) **Ecology** will issue a decision on permit coverage pursuant to Special Condition S2.C.

### **B. HOW TO APPLY FOR PERMIT COVERAGE**

The owner/operator seeking coverage under this permit must do the following:

1. Submit to Ecology, a complete application for coverage using the permit specific Notice of Intent through Ecology's Water Quality Permitting Portal: <https://secureaccess.wa.gov/ecy/wqwebportal>. The **applicant** must submit this application for coverage electronically. For more information about the WQWebPortal, visit Ecology's [WQWebPortal guidance webpage](#)<sup>2</sup>.
2. A responsible person, as defined in General Condition G2, must sign the signature page of the NOI and submit it to Ecology.
3. Public Notice
  - a. Public notice of the application for coverage is not required for the facilities subject to this general permit because they are all existing facilities.
  - b. The owner/operator of an existing facility with coverage under the Puget Sound Nutrient General Permit (**Permittee**) wanting to modify their permit coverage must comply with public notice requirements specified in Special Condition S2.D.2.

### **C. PERMIT COVERAGE EFFECTIVE DATE**

Permit coverage begins on the day Ecology issues the coverage letter to the applicant.

---

<sup>2</sup> <https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Water-quality-permits-guidance/WQWebPortal-guidance>

#### **D. MODIFICATION OF PERMIT COVERAGE**

A permittee requesting a reduction in monitoring, or a change in action level, or otherwise requesting a modification of permit coverage, must submit a complete Modification of Coverage Form to Ecology. The Permittee must:

1. Apply for modification of coverage at least 60 days prior to the change necessitating the coverage modification.
2. Complete the public notice requirements in WAC 173-226-130(5) as part of a complete application for modification of coverage.
3. Comply with **SEPA** as part of a complete application for modification of coverage if undergoing a significant process change driven by a corrective action.

#### **S3. COMPLIANCE WITH STANDARDS**

- A. Discharges must not cause or contribute to a violation of surface water quality standards (Chapter 173-201A WAC), sediment management standards (Chapter 173-204 WAC), or human health-based criteria in the Federal water quality criteria applicable to Washington (40 CFR Part 135.45). This permit does not authorize discharge in violation of water quality standards.
- B. Ecology presumes that a Permittee complies with water quality standards unless discharge monitoring data or other *site*-specific information demonstrates that a discharge causes or contributes to a violation of water quality standards, when the Permittee complies with the following conditions. The Permittee must fully comply with all permit conditions, including planning, **optimization**, corrective actions (as necessary), sampling, monitoring, reporting, waste management, and recordkeeping conditions.

#### **S4. NARRATIVE EFFLUENT LIMITS FOR WWTPS WITH DOMINANT TIN LOADS**

##### **A. APPLICABILITY AND NARRATIVE EFFLUENT LIMITS**

Beginning on the effective date, each of the Permittees with dominant TIN loads listed in Table 5 may discharge TIN from the WWTP through the designated **outfall(s)** described in its individual NPDES permit. See Table 3 in Section S1.A for the load category assignment.

All discharges and activities authorized by this permit must comply with the terms and conditions of this permit. Each Permittee listed in Table 5 must comply with the facility specific or bubbled **action levels** and narrative effluent limits listed in Table 4, which constitute the suite of **best management practices** (BMPs) required for a water quality based effluent limit under 40 CFR 122.44(k).

**Table 4. Narrative Effluent Limits for Dominant TIN Loaders**

Parameter	Narrative Effluent Limit
Monitoring	Monitor and report per the requirements in S7.A.
Nitrogen Optimization Plan	Optimize treatment performance to stay below the action level. Submit Optimization Report annually per the requirements in S4.C
Nutrient Reduction Evaluation	Submit Nutrient Reduction Evaluation per the requirements in S4.E

**B. TIN ACTION LEVELS**

If the action level listed in Table 5 for individual WWTPs or the bubbled action levels listed for single jurisdictions in Table 6 are exceeded, the Permittee must employ corrective actions identified in S4.D.

The annual Action Level is the sum of monthly nutrient loads measured over one year. Ecology will assess this total once per year based on the Permittee’s Annual Report.

**Table 5. Dominant WWTPs and Total Inorganic Nitrogen Action Levels**

Wastewater Treatment Plant	Individual NPDES Permit Number	Action Level, TIN lbs/year	Outfall Number
Everett STP	WA0024490	1,530,000	100/015
King County Brightwater WWTP <sup>1</sup>	WA0032247	1,810,000	001
King County South WWTP <sup>1</sup>	WA0029581	7,340,000	001
King County West Point WWTP <sup>1</sup>	WA0029181	6,670,000	001
Pierce County Chambers Creek Regional WWTP	WA0039624	1,880,000	001
Post Point WWTP (Bellingham STP)	WA0023744	993,000	001
Tacoma Central No. 1 WWTP <sup>4</sup>	WA0037087	2,410,000	001

**Table 6. Bubbled Action Levels for Corrective Action Assessment**

Jurisdiction	Bubbled Action Level, TIN lbs/year
King County	15,820,000

**C. NITROGEN OPTIMIZATION PLAN AND REPORT**

Each Permittee listed in Table 5 must develop, implement and maintain a Nitrogen Optimization Plan to evaluate operational strategies for maximizing nitrogen removal from the existing treatment plant to stay below the calculated action level. Each Permittee must document their actions taken, any action level exceedances, and apply an adaptive management approach at the WWTP. Permittees will quantify results with required monitoring under this Permit.

**The Permittee must begin the actions described in this section immediately upon permit coverage.** Documentation of Nitrogen Optimization Plan implementation must be submitted annually through the Annual Report (S9- Reporting Requirements). See Appendix C for Annual Report questions that satisfy the Nitrogen Optimization Plan requirements.

The Nitrogen Optimization Plan submitted by each Permittee in Table 5 must include the following components:

1. Treatment Process Performance Assessment

Assess the nitrogen removal potential of the current treatment process and identify viable optimization strategies prior to implementation.

- a. *Treatment Assessment* Develop a method to evaluate potential optimization approaches for the existing treatment process. Use the evaluation to:
  - i. Determine current (pre-optimization) process performance to determine the existing TIN removal performance for the WWTP.
  - ii. Create a list of potential optimization strategies capable of meeting the action level at the WWTP prior to starting optimization. Update the assessment and list of options as necessary with each Annual Report.
- b. *Identify and evaluate optimization strategies.* From the list developed in S4.C.1.a.ii, identify viable optimization strategies for each WWTP owned and operated by the Permittee. Prioritize and update this list as necessary to continuously maintain a working set of strategies for meeting the action level with the existing treatment processes.

The Permittee may exclude any optimization strategy from the initial list created in S4.C.a.ii that was considered but found to exceed a reasonable implementation cost or timeframe. Documentation must include an explanation of the rationale and financial criteria used in the exclusion determination. If the Permittee finds no viable optimization strategies exist

for their current treatment processes, they must immediately proceed to the identification of a corrective action under S4.D.

- c. *Initial Selection.* **As soon as possible and no later than July 1, 2022**, select at least one optimization strategy for implementation.

Document the expected performance (i.e., % TIN removal or a calculated reduction in effluent load or concentration) for the initial optimization strategy prior to implementation.

## 2. Optimization Implementation

All Permittees in Table 5 must document implementation of the selected optimization strategy (from S4.C.1.c) during the first reporting period in the first Annual Report due March 31, 2023. Permittees must document implementation during every reporting period thereafter. The documentation must include:

- a. *Strategy Implementation.* Describe how the permittee implemented the selected strategy during each reporting period, following permit coverage. Including:
  - i. Initial implementation costs
  - ii. Length of time for full implementation, including start date.
  - iii. Any adaptive management applied to refine implementation during the reporting period.
  - iv. Anticipated and unanticipated challenges.
  - v. Any impacts to the overall treatment performance as a result of process changes.
- b. *Discharge Evaluation.* By March 31 each year beginning in 2023, each Permittee in Table 5 must review effluent data collected during the previous calendar year to determine whether TIN loads are increasing.
  - i. Using all accredited monitoring data, determine facility's annual average TIN concentration and load from the reporting period. **If the annual TIN load exceeds the Action Level in Table 5 (or the applicable bubbled Action Level in Table 6) take the corrective actions in S4.D.**
  - ii. Determine the treatment plant's TIN removal rate observed during the reporting period.

## 3. Influent Nitrogen Reduction Measures/Source Control

Permittees in Table 5 must investigate opportunities to reduce influent TIN loads from septage handling practices, commercial, dense residential and industrial sources and submit documentation with the Annual Report. The investigation must:



- a. Review non-residential sources of nitrogen and identify any possible pretreatment opportunities.
- b. Identify potential strategies for reducing TIN from new multi-family/dense residential developments and commercial buildings.

**D. ACTION LEVEL EXCEEDANCE CORRECTIVE ACTIONS**

Permittees in Table 5 must evaluate whether or not they exceeded the facility specific action level or the bubbled action level (as applicable) and, if they did, implement corrective actions while continuing optimization.

1. If the Permittee determines in the Annual Report that they have exceeded their action level, they must:
  - a. Identify possible factors that caused the action level exceedance.
  - b. Identify whether modifications to the optimization strategy can improve performance.
  - c. Assess whether a different strategy or combination of strategies may provide better overall process improvements.
  - d. Document changes made to the optimization strategy, if any, while completing corrective action requirements.
    - i. Provide a detailed description of the modified or new optimization strategy selected from the list developed in S4.C.1.b. Include an implementation schedule for any changes and, as necessary, use the treatment process assessment developed to evaluate anticipated results.
    - ii. If the Permittee proposes no changes to the optimization strategy, they must provide reasons for not making changes.
2. With the next Annual Report, submit for review a proposed approach to reduce the annual effluent load by at least 10% below the action level listed in Table 5 for individual plants or Table 6 for multiple plants under a bubbled action level. This must be an abbreviated engineering report or technical memo, unless Ecology has previously approved a design document with the proposed solution. The proposed approach must utilize solutions that can be implemented as soon as possible. This may include influent load reduction strategies identified in S4.C.3.

The engineering document must include:

- i. Brief summary of the treatment alternatives considered and why the proposed approach was selected. Include cost estimates for operation and maintenance;
- ii. The basic design information, including influent characterization;
- iii. A description of the proposed treatment approach and operation, including updates to the WWTP's process flow diagram;

- iv. Anticipated results from the proposed approach including expected effluent quality;
- v. Certification by a licensed professional engineer.
- a. If a Permittee exceeds an action level two years in a row, or for a third year during the permit term, the Permittee must begin to reduce nitrogen loads by implementing the proposed approach submitted per S4.D.2 following Ecology's written approval of the proposed approach and implementation schedule.
- b. Submit an update to the Permittee's Operation and Maintenance Manual no later than 6 months following implementation.

**E. NUTRIENT REDUCTION EVALUATION**

1. All permittees in Table 5, except for those who meet the exclusions listed in this paragraph, must prepare and submit an approvable Nutrient Reduction Evaluation (NRE) to Ecology for review by December 31, 2025. Permittees with multiple plants may submit a combined report. This combined report must include an evaluation for all plants owned and operated by the jurisdiction. Permittees that maintain an annual TIN average of < 10 mg/L and meet their action level throughout the permit term must submit a truncated NRE that satisfies S4.E.3-S4.E.5. Permittees that meet their action level throughout the permit term, maintain an annual average of < 10 mg/L TIN and a seasonal average of < 3 mg/L do not have to submit the NRE.
2. The NRE must include an all known, available and reasonable treatment (**AKART**) analysis for purposes of evaluating reasonable treatment alternatives capable of reducing total inorganic nitrogen (TIN). It must present an alternative representing the greatest TIN reduction that is reasonably feasible on an annual basis.
3. In addition, the NRE must assess other site-specific main stream treatment plant upgrades, the applicability of side stream treatment opportunities, alternative effluent management options (e.g., disposal to ground, reclaimed water beneficial uses), the viability of satellite treatment, and other nutrient reduction opportunities that could achieve a final effluent concentration of 3 mg/L TIN (or equivalent load reduction) on seasonal average (April – October) basis.

4. The analysis must be sufficiently complete that an engineering report may be developed for the preferred AKART alternative as well as the preferred alternatives to reach 3 mg/L TIN seasonally, without substantial alterations of concept or basic considerations. The final report must contain appropriate requirements as described in the following guidance (or most recent version):
  - a. The Criteria for Sewage Works Design (ECY Publication No. 98-37, 2019)<sup>3</sup>
  - b. Reclaimed Water Facilities Manual: The Purple Book (ECY Publication No. 15-10-024, 2019)<sup>4</sup>
5. The analysis conducted for the NRE must include the following elements:
  - a. Wastewater Characterization
    - i. Current flowrates and growth trends within the sewer service area.
    - ii. Current influent and effluent quality.
  - b. Treatment Technology Analysis
    - i. Description of current treatment processes, including any modifications made for optimization or due to corrective actions.
    - ii. Description of site limitations, constraints, or other treatment implementation challenges that exist.
    - iii. Identification and screening of potential treatment technologies for meeting two different levels of treatment:
      1. AKART for nitrogen removal (annual basis), and
      2. 3 mg/L TIN (or equivalent load), as a seasonal average April - October
  - c. Economic Evaluation
    - i. Develop capital, operation and maintenance costs and 20 year net present value using the real discount rate in the most current Appendix C to Office of Management and Budget Circular No. A-94<sup>5</sup> for each technology alternative evaluated.
    - ii. Provide cost per pound of nitrogen removed.
    - iii. Provide details on basis for current wastewater utility rate structure, including:
      1. How utilities allocate and recover costs from customers.

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<sup>3</sup> <https://apps.ecology.wa.gov/publications/summarypages/9837.html>

<sup>4</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/1510024.html>

<sup>5</sup> [https://www.whitehouse.gov/wp-content/uploads/2020/12/2020\\_Appendix-C.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/12/2020_Appendix-C.pdf)

2. How frequently rate structures are reviewed.
3. The last time rates were adjusted and the reason for that adjustment.
- iv. Provide impact to current rate structure for each alternative assessed.
- d. Environmental Justice (EJ) Review
  - i. Evaluate the demographics within the sewer service area to identify communities of color, Tribes, indigenous communities, and low income populations.
  - ii. Identify areas within service area that exceed the median household income.
  - iii. Include an affordability assessment to identify how much overburdened communities identified in S4.E.5.d.i can afford to pay for the wastewater utility.
  - iv. Propose alternative rate structures or measures that can be taken to prevent adverse effects of rate increases on populations with economic hardship identified in S4.E.5.d.i.
  - v. Provide information on how recreational and commercial opportunities may be improved for communities identified in S4.E.5.d.i as a result of the treatment improvements identified.
- e. Selection of the most reasonable treatment alternative based on the AKART assessment; and the selected alternative for achieving an effluent concentration of 3 mg/L TIN (or equivalent load reduction) based on an April – October seasonal average.
- f. Viable implementation timelines that include funding, design, and construction for meeting both the AKART and seasonal average 3 mg/L TIN preferred alternatives.

**S5. NARRATIVE EFFLUENT LIMITS FOR WWTPS WITH MODERATE TIN LOADS**

**A. APPLICABILITY AND NARRATIVE EFFLUENT LIMITS**

Beginning on the effective date, each of the Permittees with moderate TIN loads listed in Table 8 may discharge TIN from the WWTP through the designated **outfall(s)** described in its individual NPDES permit. See Table 3 in Section S1.A for the load category assignment.

All discharges and activities authorized by this permit must comply with the terms and conditions of this permit. Each Permittee listed in Table 8 must comply with the facility specific or bubbled **action levels** and narrative effluent limits listed in Table 7, which constitute the suite of **best management practices** (BMPs) required for a water quality based effluent limit under 40 CFR 122.44(k).

**Table 7. Narrative Effluent Limits for Moderate TIN Loaders**

Parameter	Narrative Effluent Limit
Monitoring	Monitor and report per the requirements in S7.B.
Nitrogen Optimization Plan	Optimize treatment performance to stay below the action level. Submit Optimization Report annually per the requirements in S5.C
Nutrient Reduction Evaluation	Submit Nutrient Reduction Evaluation per the requirements in S5.E

**B. TIN ACTION LEVELS**

If the action level listed in Table 8 for individual WWTPs or the bubbled action levels listed for single jurisdictions in Table 9 are exceeded, the Permittee must employ corrective actions identified in S5.D.

The annual Action Level is the sum of monthly nutrient loads measured over one year. Ecology will assess this total once per year based on the Permittee’s Annual Report.

**Table 8. Moderate WWTPs and Total Inorganic Nitrogen Action Levels**

Wastewater Treatment Plant	Individual NPDES Permit Number	Action Level, TIN lbs/year	Outfall Number
Anacortes WWTP	WA0020257	167,000	001
Birch Bay Sewage Treatment Plant (STP)	WA0029556	66,400	001
Blaine STP (Lighthouse Point WRF)	WA0022641	18,200	001
Bremerton WWTP	WA0029289	602,000	001
Kitsap County Central Kitsap WWTP	WA0030520	306,000	001
Edmonds STP	WA0024058	432,000	001
Lake Stevens Sewer District WWTP	WA0020893	127,000	002
Lakota WWTP †	WA0022624	597,000	001

Wastewater Treatment Plant	Individual NPDES Permit Number	Action Level, TIN lbs/year	Outfall Number
LOTT Budd Inlet WWTF	WA0037061	338,000	001
Lynnwood STP	WA0024031	340,000	001
Marysville STP	WA0022497	592,000	100/001
Midway Sewer District WWTP	WA0020958	625,500	001
Miller Creek WWTP <sup>2</sup>	WA0022764	297,000	001
Mt Vernon WWTP	WA0024074	396,000	004
Port Angeles WWTP	WA0023973	177,000	001/002
Port Orchard WWTP (South Kitsap WRF)	WA0020346	215,000	001
Redondo WWTP <sup>1</sup>	WA0023451	249,000	001
Salmon Creek WWTP <sup>2</sup>	WA0022772	199,000	001
Snohomish STP	WA0029548	83,600	001
Tacoma North No. 3 WWTP	WA0037214	339,000	001

**Table 9. Bubbled Action Levels for Corrective Action Assessment**

Jurisdiction	Bubbled Action Level, TIN lbs/year
Lakehaven Water and Sewer District <sup>1</sup>	846,000
Southwest Suburban Sewer District <sup>2</sup>	496,000

**C. NITROGEN OPTIMIZATION PLAN AND REPORT**

Each Permittee listed in Table 8 must develop, implement and maintain a Nitrogen Optimization Plan to evaluate operational strategies for maximizing nitrogen removal from the existing treatment plant to stay below the calculated action level. Each Permittee must document their actions taken, any action level exceedances, and apply an adaptive management approach at the WWTP. Permittees will quantify results with required monitoring under this Permit.

**The Permittee must begin the actions described in this section immediately upon permit coverage.** Documentation of Nitrogen Optimization Plan implementation must be submitted annually through the Annual Report (S9- Reporting Requirements). See Appendix D for annual report questions that satisfy the Nitrogen Optimization Plan requirements.

The Nitrogen Optimization Plan submitted by each Permittee in Table 8 must include the following components:

## 1. Treatment Process Performance Assessment

Assess the nitrogen removal potential of the current treatment process and identify viable optimization strategies prior to implementation.

- a. *Treatment Assessment.* Develop a method to evaluate potential optimization approaches for the existing treatment process. Use the evaluation to:
  - i. Evaluate current (pre-optimization) process performance to determine the existing TIN removal performance for the WWTP.
  - ii. Create a list of potential optimization strategies capable of meeting the action level at the WWTP prior to starting optimization. Update the assessment and list of options as necessary with each Annual Report.
- b. *Identify and evaluate optimization strategies.* From the list developed in S5.C.1.a.ii, identify viable optimization strategies for each WWTP owned and operated by the Permittee. Prioritize and update this list as necessary to continuously maintain a working set of strategies for meeting the action level with the existing treatment processes.

The Permittee may exclude any optimization strategy from the initial list created in S5.C.a.ii that was considered but found to exceed a reasonable implementation cost or timeframe. Documentation must include an explanation of the rationale and financial criteria used in the exclusion determination. If the Permittee finds no viable optimization strategies exist for their current treatment processes, they must immediately proceed to the identification of a corrective action under S5.D.

- c. *Initial Selection.* **As soon as possible and no later than July 1, 2022** select at least one optimization strategy for implementation.

Document the expected performance (i.e., % TIN removal or a calculated reduction in effluent load or concentration) for the initial optimization strategy prior to implementation.

## 2. Optimization Implementation

All Permittees in Table 8 must document implementation of the selected optimization strategy (from S5.C.1.c) during the first reporting period in the first Annual Report due March 31, 2023. Permittees must document implementation during every reporting period thereafter. The documentation must include:

- a. *Strategy Implementation.* Describe how the permittee implemented the selected strategy during each reporting period, following permit coverage. Including:
  - i. Initial implementation costs
  - ii. Length of time for full implementation, including start date.

- iii. Any adaptive management applied to refine implementation during the reporting period.
  - iv. Anticipated and unanticipated challenges.
  - v. Any impacts to the overall treatment performance as a result of process changes.
- b. *Discharge Evaluation.* By March 31 each year beginning in 2023, each Permittee in Table 8 must review effluent data collected during the previous calendar year to determine whether TIN loads are increasing.
- i. Using all accredited monitoring data, determine facility's annual average TIN concentration and load from the reporting period. **If the annual TIN load exceeds the Action Level in Table 8 (or the applicable bubbled Action Level in Table 9) take the corrective actions in S5.D.**
  - ii. Determine the treatment plant's TIN removal rate observed during the reporting period.
3. Influent Nitrogen Reduction Measures/Source Control

Permittees in Table 8 must investigate opportunities to reduce influent TIN loads from septage handling practices, commercial, dense residential and industrial sources and submit documentation with the Annual Report. The investigation must:

- a. Review non-residential sources of nitrogen and identify any possible pretreatment opportunities.
- b. Identify potential strategies for reducing TIN from new multi-family/dense residential developments and commercial buildings.

#### **D. ACTION LEVEL EXCEEDANCE CORRECTIVE ACTIONS**

Permittees in Table 8 must evaluate whether or not they exceeded the facility specific action level or the bubbled action level (as applicable) and, if they did, implement corrective actions while continuing optimization.

- 1. If the Permittee determines in the Annual Report that they have exceeded their action level, they must:
  - a. Identify possible factors that caused the action level exceedance.
  - b. Identify whether modifications to the optimization strategy can improve performance.
  - c. Assess whether a different strategy or combination of strategies may provide better overall process improvements.
  - d. Document changes made to the optimization strategy, if any, while completing corrective action requirements.



- i. Provide a detailed description of the modified or new optimization strategy selected from the list developed in S5.C.1.b. Include an implementation schedule for any changes and, as necessary, use the treatment process assessment developed to evaluate anticipated results.
  - ii. If the Permittee proposes no changes to the optimization strategy, they must provide reasons for not making changes.
2. With the next Annual Report, submit for review a proposed approach to reduce the annual effluent load below the action level listed in either Table 8 or Table 9 (as applicable for those jurisdictions) for the duration of the permit term. This must be an abbreviated engineering report or technical memo, unless Ecology has previously approved a design document with the proposed solution. The proposed approach must utilize solutions that can be implemented as soon as possible. This may include influent load reduction strategies identified in S5.C.3.

The engineering document must include:

- i. Brief summary of the treatment alternatives considered and why the proposed approach was selected. Include cost estimates for operation and maintenance;
  - ii. The basic design information, including influent characterization;
  - iii. A description of the proposed treatment approach and operation, including updates to the WWTP's process flow diagram;
  - iv. Anticipated results from the proposed approach including expected effluent quality;
  - v. Certification by a licensed professional engineer.
- b. If a Permittee exceeds an action level two years in a row, or for a third year during the permit term, the Permittee must begin to reduce nitrogen loads by implementing the proposed approach submitted per S5.D.2 following Ecology's written approval of the proposed approach and implementation schedule.
- c. Submit an update to the Permittee's Operation and Maintenance Manual no later than 6 months following implementation.

## E. NUTRIENT REDUCTION EVALUATION

1. Permittees in Table 8, except for those who meet the exclusions listed in this paragraph, must prepare and submit an approvable Nutrient Reduction Evaluation (NRE) to Ecology for review by December 31, 2025. Permittees with multiple plants may submit a combined report. This combined report must include an evaluation for all plants owned and operated by the jurisdiction. Permittees that maintain an annual TIN average of < 10 mg/L and meet their action level throughout the permit term must submit a truncated NRE that satisfies S5.E.3-S5.E.5. Permittees that meet their action level throughout the permit term, maintain an annual average of < 10 mg/L TIN and a seasonal average of < 3 mg/L do not have to submit the NRE.
2. The NRE must include an all known, available and reasonable treatment (**AKART**) analysis for purposes of evaluating reasonable treatment alternatives capable of reducing total inorganic nitrogen (TIN). It must present an alternative representing the greatest TIN reduction that is reasonably feasible on an annual basis.
3. In addition, the NRE must assess other site- specific main stream treatment plant upgrades, the applicability of side stream treatment opportunities, alternative effluent management options (e.g., disposal to ground, reclaimed water beneficial uses), the viability of satellite treatment, and other nutrient reduction opportunities that could achieve a final effluent concentration of 3 mg/L TIN (or equivalent load reduction) on seasonal average (April – October) basis.
4. The analysis must be sufficiently complete that an engineering report may be developed for the preferred AKART alternative as well as the preferred alternatives to reach 3 mg/L TIN seasonally, without substantial alterations of concept or basic considerations. The final report must contain appropriate requirements as described in the following guidance (or most recent version):
  - a. The Criteria for Sewage Works Design (ECY Publication No. 98-37, 2019)<sup>6</sup>
  - b. Reclaimed Water Facilities Manual: The Purple Book (ECY Publication No. 15-10-024, 2019)<sup>7</sup>
5. The analysis conducted for the NRE must include the following elements:
  - a. Wastewater Characterization
    - i. Current flowrates and growth trends within the sewer service area.
    - ii. Current influent and effluent quality.
  - b. Treatment Technology Analysis

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<sup>6</sup> <https://apps.ecology.wa.gov/publications/summarypages/9837.html>

<sup>7</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/1510024.html>

- i. Description of current treatment processes, including any modifications made for optimization or due to corrective actions.
  - ii. Description of site limitations, constraints, or other treatment implementation challenges that exist.
  - iii. Identification and screening of potential treatment technologies for meeting two different levels of treatment:
    - 1. AKART for nitrogen removal (annual basis), and
    - 2. 3 mg/L TIN (or equivalent load), as a seasonal average (April through October)
- c. Economic Evaluation
- i. Develop capital, operation and maintenance costs and 20 year net present value using the real discount rate in the most current Appendix C to Office of Management and Budget Circular No. A-94<sup>8</sup> for each technology alternative evaluated.
  - ii. Provide cost per pound of nitrogen removed.
  - iii. Provide details on basis for current wastewater utility rate structure, including:
    - 1. How utilities allocate and recover costs from customers.
    - 2. How frequently rate structures are reviewed.
    - 3. The last time rates were adjusted and the reason for that adjustment.
  - iv. Provide impact to current rate structure for each alternative assessed.
- d. Environmental Justice (EJ) Review
- i. Evaluate the demographics within the sewer service area to identify communities of color, Tribes, indigenous communities, and low income populations.
  - ii. Identify areas within service area that exceed the median household income.
  - iii. Include an affordability assessment to identify how much overburdened communities identified in S5.E.5.d.i can afford to pay for the wastewater utility.
  - iv. Propose alternative rate structures or measures that can be taken to prevent adverse effects of rate increases on populations with economic hardship identified in S5.E.5.d.i.

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<sup>8</sup> [https://www.whitehouse.gov/wp-content/uploads/2020/12/2020\\_Appendix-C.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/12/2020_Appendix-C.pdf)

- v. Provide information on how recreational and commercial opportunities may be improved for communities identified in S5.E.5.d.i as a result of the treatment improvements identified.
- e. Selection of the most reasonable treatment alternative based on the AKART assessment; and the selected alternative for achieving an effluent concentration of 3 mg/L TIN (or equivalent load reduction) based on an April through October seasonal average.
- f. Viable implementation timelines that include funding, design, and construction for meeting both the AKART and seasonal average 3 mg/L TIN preferred alternatives.

**S6. NARRATIVE EFFLUENT LIMITS FOR WWTPS WITH SMALL TIN LOADS**

**A. APPLICABILITY AND NARRATIVE EFFLUENT LIMITS**

Beginning on the effective date, each of the Permittees with small TIN loads listed in Table 11 may discharge total inorganic nitrogen from the WWTP through each facility's designated outfall. See Table 3 in Section S1.A for the load category assignment.

All discharges and activities authorized by this permit must comply with the terms and conditions of this permit. Each Permittee listed in Table 11 must comply with the narrative effluent limits listed in Table 10 which constitute the suite of BMPs required for a narrative water quality based effluent limit under 40 CFR 122.44(k).

**Table 10. Narrative Effluent Limits for WWTPs with Small TIN Loads**

<b>Parameter</b>	<b>Narrative Effluent Limit</b>
Monitoring	Monitor and report per the requirements in S7.C.
Nitrogen Optimization Plan	Submit one Optimization Report per the requirements in S6.B
AKART Analysis	Submit an AKART Analysis per the requirements in S6.C

**Table 11. Permittees with Small TIN Loads**

<b>Wastewater Treatment Plant</b>	<b>Individual NPDES Permit Number</b>	<b>Outfall Number</b>
Alderwood STP	WA0020826	001
Bainbridge Island WWTP	WA0020907	001
Boston Harbor STP	WA0040291	001
Clallam Bay STP	WA0024431	001
Clallam Bay Corrections Center STP	WA0039845	001
Coupeville STP	WA0029378	001
Eastsound Orcas Village WWTP	WA0030911	001
Eastsound Sewer and Water District WWTP	WA0030571	001
Fisherman Bay STP	WA0030589	001
Friday Harbor STP	WA0023582	001
Gig Harbor WWTP	WA0023957	001
Hartstene Pointe STP	WA0038377	001
King County Vashon WWTP	WA0022527	001
Kitsap County Kingston WWTP	WA0032077	001
Kitsap County Manchester WWTP	WA0023701	001
Kitsap County Sewer District #7 Water Reclamation Facility (WRF)	WA0030317	001
La Conner STP	WA0022446	001
Langley WWTP	WA0020702	001
McNeil Island Special Commitment Center WWTP	WA0040002	001
Mukilteo Water and Wastewater District WWTP	WA0023396	001
Oak Harbor STP	WA0020567	003
Penn Cove WWTP	WA0029386	001
Port Townsend STP	WA0037052	001
Rustlewood STP	WA0038075	001
Sekiu WWTP	WA0024449	001
Sequim WRF	WA0022349	001
Shelton WWTP	WA0023345	001

Wastewater Treatment Plant	Individual NPDES Permit Number	Outfall Number
Skagit County Sewer District 2 Big Lake WWTP	WA0030597	001
Stanwood STP	WA0020290	001
Tamoshan STP	WA0037290	001
WA Parks Larrabee WWTP	WA0023787	001

**B. NITROGEN OPTIMIZATION PLAN AND REPORT**

Each Permittee listed in Table 11 must develop, implement, and maintain a Nitrogen Optimization Plan to evaluate and implement operational strategies for maximizing nitrogen removal from the existing treatment plant during the permit term. Permittees must document their actions taken and apply an adaptive management approach at the WWTP. Permittees will quantify results with required monitoring under this Permit.

**The Permittee must begin the actions described in this section immediately upon permit coverage.** Documentation of Nitrogen Optimization Plan implementation must be submitted through the Single Report (S9- Reporting Requirements). See Appendix E for report questions that satisfy the Nitrogen Optimization Plan requirements. This report must be submitted by March 31, 2026.

The Nitrogen Optimization Plan submitted by each Permittee in Table 11 must include the following components:

1. Treatment Process Performance Assessment

Each Permittee listed in Table 11 must assess the nitrogen removal potential of the current treatment process and have the ability to evaluate optimization strategies prior to implementation.

- a. *Evaluation.* Each Permittee in Table 11 must develop a treatment process assessment method for purposes of evaluating optimization approaches during the permit term.
  - i. Evaluate current (pre-optimization) process performance. Determine the empirical TIN removal rate for the WWTP.
  - ii. Develop an initial assessment approach to evaluate possible optimization strategies at the WWTP prior to and after implementation.
  - iii. Determine the optimization goal for the WWTP. Develop and document a prioritized list of optimization strategies capable of achieving the optimization goal for each WWTP owned and operated by the Permittee. Update this list as necessary to continuously maintain a selection of strategies for achieving each optimization goal identified.

iv. The Permittee may exclude from the initial selection any optimization strategy considered but found to exceed a reasonable implementation cost or timeframe. Documentation must include an explanation of the rationale and financial criteria used for the exclusion determination.

b. *Initial Selection. By December 31, 2022* identify the optimization strategy selected for implementation.

Document the expected % TIN removal (or the expected reduction in effluent load) for the optimization strategy prior to implementation.

## 2. Optimization Implementation

Permittees in Table 11 must document implementation of the selected optimization strategy (from S6.B.1.b) as it is applied to the existing treatment process during the reporting period. Permittees must document adaptive management applied to optimization strategies following initial implementation through the permit term.

a. *Strategy Implementation.* Describe how the selected strategy was implemented during the reporting period, following permit coverage. Including:

i. Initial implementation costs.

ii. Length of time for full implementation, including start date.

iii. Anticipated and unanticipated challenges.

iv. Any impacts to the overall treatment performance as a result of process changes.

b. *Load Evaluation.* Each Permittee listed in Table 11 must review effluent data collected during the reporting period to determine whether TIN loads are increasing.

i. Using all accredited monitoring data, determine the facility's annual average TIN concentration and load for each year during the reporting period.

ii. Determine the treatment plant's TIN removal rate at the end of each year. Compare the removal rate with the pre-optimization rate identified in S6.B.1.a.i.

c. *Strategy Assessment.* Quantify the results of the implemented strategy and compare to the performance metric identified in S6.B.1.b.

If the TIN loading increased, apply adaptive management, re-evaluate the optimization strategies and the resulting performance to identify the reason. Select a new optimization strategy for implementation and/or revise implementation for better performance. Document any updates to the implementation schedule and overall plan.

### 3. Influent Nitrogen Reduction Measures/Source Control

Permittees in Table 11 must investigate opportunities to reduce influent TIN loads from septage handling practices, commercial, dense residential and industrial sources and submit documentation with the Annual Report. The investigation must:

- a. Review non-residential sources of nitrogen and identify any possible pretreatment opportunities.
- b. Identify strategies for reducing TIN from new multi-family/dense residential developments and commercial buildings.

### C. AKART ANALYSIS

1. Permittees in Table 11, except for those who meet the exclusions listed in this paragraph, must prepare and submit an approvable all known, available and reasonable treatment (AKART) analysis to Ecology for purposes of evaluating reasonable treatment alternatives capable of reducing total inorganic nitrogen (TIN). Permittees must submit this report by December 31, 2025. Permittees that maintain an annual TIN average of < 10 mg/L and do not document an increase in load through their DMRs do not have to submit this analysis.
2. The analysis must contain appropriate requirements as described in the following guidance (or the most recent version):
  - a. The Criteria for Sewage Works Design (ECY Publication No. 98-37, 2019)<sup>9</sup>
  - b. Reclaimed Water Facilities Manual: The Purple Book (ECY Publication No. 15-10-024, 2019)<sup>10</sup>
3. The AKART analysis must include the following elements:
  - a. Wastewater Characterization
    - i. Current volumes, flowrates and growth trends
    - ii. Current influent and effluent quality
  - b. Treatment Technology Analysis
    - i. Description of current treatment processes
    - ii. Identification and screening of potential treatment technologies for TIN reduction that achieves AKART for nitrogen removal
  - c. Economic Evaluation

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<sup>9</sup> <https://apps.ecology.wa.gov/publications/documents/9837.pdf>

<sup>10</sup> <https://apps.ecology.wa.gov/publications/SummaryPages/1510024.html>



- i. Develop capital, operation and maintenance costs and 20 year net present value using the real discount rate in the most current Appendix C to Office of Management and Budget Circular No. A-94<sup>11</sup> for each technology alternative evaluated.
- ii. Provide cost per pound of nitrogen removed
- iii. Provide details on basis for current wastewater utility rate structure, including:
  - 1. How utilities allocate and recover costs from customers.
  - 2. How frequently rate structures are reviewed.
  - 3. The last time rates were adjusted and the reason for that adjustment.
- iv. Provide impact to current rate structure for each alternative assessed.
- d. Environmental Justice (EJ) Review
  - i. Evaluate the demographics within the sewer service area to identify communities of color, Tribes, indigenous communities, and low income populations.
  - ii. Identify areas within the service area that exceed the median household income.
  - iii. Include an affordability assessment to identify how much overburdened communities identified in S6.C.3.d.i can afford to pay for the wastewater utility.
  - iv. Propose alternative rate structures or measures that can be taken to prevent adverse effects of rate increases on populations with economic hardship identified in S6.C.3.d.i.
  - v. Provide information on how recreation and commercial opportunities may be improved for communities identified in S6.C.3.d.i as a result of the treatment improvements identified.
- e. Selection of most reasonable treatment alternative.
- f. Attainable implementation schedule that includes funding, design and construction of infrastructure improvement capable of achieving and maintaining AKART.

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<sup>11</sup> [https://www.whitehouse.gov/wp-content/uploads/2020/12/2020\\_Appendix-C.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/12/2020_Appendix-C.pdf)

## 57. MONITORING SCHEDULES AND SAMPLING REQUIREMENTS

### A. MONITORING REQUIREMENTS FOR DOMINANT LOADERS

Each permittee listed in Table 5 must monitor influent and effluent in accordance with the following schedule and requirements specified in Table 12 and 13, respectively. Influent and effluent monitoring locations must be representative. Permittees may use the monitoring locations identified in their individual NPDES permit. If a Permittee conducts additional sampling of required parameters during the month, they must report all results on the monthly DMR.

**Table 12. Influent Sampling Requirements for Dominant Loaders**

Wastewater influent means the raw sewage flow from the collection system into the treatment facility. Sample the wastewater entering the headworks of the treatment plant excluding any side-stream returns from inside the plant, if possible.

The Permittee must collect total ammonia, nitrate plus nitrite, and TKN samples during the same sampling event.

Parameter	Units & Specifications	Minimum Sampling or Calculation Frequency	Analytical Method <sup>1</sup>	Laboratory Quantitation Level <sup>1</sup>	Sample Type
CBOD <sub>5</sub>	mg/L	2/week <sup>b</sup>	SM5210-B	2 mg/L	24-hour composite <sup>e</sup>
Total Ammonia	mg/L as N	2/week <sup>b</sup>	SM4500-NH <sub>3</sub> -B/C/D/E/F/G/H	0.02 mg/L	24-hour composite <sup>e</sup>
Nitrate plus Nitrite Nitrogen	mg/L as N	1/month <sup>c</sup>	SM4500-NO <sub>3</sub> -E/F/H	0.1 mg/L	24-hour composite <sup>e</sup>
Total Kjeldahl Nitrogen (TKN)	mg/L as N	1/month <sup>c</sup>	SM4500-N <sub>org</sub> -B/C and SM4500-NH <sub>3</sub> -B/C/D/E/F/G/H	0.3 mg/L	24-hour composite <sup>e</sup>

**Table 13. Effluent Sampling Requirements for Dominant Loaders**

Final wastewater effluent means wastewater exiting the last treatment process or operation. Typically, this is after or at the exit from the chlorine contact chamber or other disinfection process. The total ammonia, TKN, and nitrate plus nitrite samples must be taken during the same sampling event.

Parameter	Units & Specifications	Minimum Sampling or Calculation Frequency	Analytical Method <sup>k</sup>	Laboratory Quantitation Level <sup>l</sup>	Sample Type
Flow <sup>f</sup>	MGD	2/week <sup>b</sup>	-	-	Metered/recorded
CBOD <sub>5</sub> <sup>a</sup>	mg/L	2/week <sup>b</sup>	SM5210-B	2 mg/L	24-hour composite <sup>e</sup>
Total Organic Carbon	mg/L	1/quarter <sup>d</sup>	SM5310-B/C/D	1 mg/L	24-hour composite <sup>e</sup>
Total Ammonia	mg/L as N	2/week <sup>b</sup>	SM4500-NH <sub>3</sub> -B/C/D/E/F/G/H	0.02 mg/L	24-hour composite <sup>e</sup>
Nitrate plus Nitrite Nitrogen	mg/L as N	2/week <sup>b</sup>	SM4500-NO <sub>3</sub> -E/F/H	0.1 mg/L	24-hour composite <sup>e</sup>
TKN	mg/L as N	1/month <sup>c</sup>	SM4500-N <sub>org</sub> -B/C and SM4500-NH <sub>3</sub> -B/C/D/E/F/G/H	0.3 mg/L	24-hour composite <sup>e</sup>
Total Inorganic Nitrogen	mg/L as N	2/week <sup>b</sup>	-	-	Calculated <sup>g</sup>
Total Inorganic Nitrogen	Lbs/day	2/week <sup>b</sup>	-	-	Calculated <sup>h</sup>
Average Monthly Total Inorganic Nitrogen	Lbs	1/month <sup>c</sup>	-	-	Calculated <sup>i</sup>
Annual Total Inorganic Nitrogen, year to date	Lbs	1/month <sup>c</sup>	-	-	Calculated <sup>j</sup>

**Table 14. Footnotes for Influent and Effluent Monitoring Tables 12 and 13**

Footnote	Information
a	Take effluent samples for the CBOD <sub>5</sub> analysis before or after the disinfection process. If taken after disinfection and chlorine is used, dechlorinate and reseed the sample.
b	2/week means two (2) times during each week
c	1/month means one (1) time during each month
d	Quarterly sampling periods are January through March, April through June, July through September, and October through December. The Permittee must begin quarterly monitoring for the quarter beginning on <u>1/1/22</u> <u>4/1/22</u> <u>7/1/22</u> <u>10/1/22</u> and submit results by <u>4/15/22</u> , <u>7/15/22</u> , <u>10/15/22</u> , <u>1/15/22</u> .
e	24-hour <i>composite</i> means a series of individual samples collected over a 24-hour period into a single container, and analyzed as one sample.
f	Report daily flows only on days when collecting total ammonia and nitrate plus nitrite samples.
g	TIN (mg/L) as N = Total Ammonia (mg/L as N) + Nitrate plus Nitrite (mg/L as N)
h	Calculate mass concurrently with the respective concentration of a sample, using the following formula: Concentration (in mg/L) X daily flow (in MGD) X Conversion Factor (8.34) = lbs/day
i	Calculate the monthly average total inorganic nitrogen load (lbs as N) using the following equation: Monthly average TIN load (lbs as N) $= \left( \left( \sum \text{Calculated TIN loads} \left( \frac{\text{lbs}}{\text{day}} \text{ as N} \right) \right) / \text{number of samples} \right) \times \text{number of days in the calendar month}$
j	Calculate the annual total inorganic nitrogen, year to date using the following calculation: $\text{Annual TIN load (lbs as N)} = \sum \text{Monthly average TIN loads, to date}$
k	Or other equivalent EPA-approved method with the same or lower quantitation level
l	The Permittee must ensure laboratory results comply with the quantitation level (QL) specified in the table. However, if an alternative method from 40 CFR Part 136 is sufficient to produce measurable results in the sample, the Permittee may use that method for analysis. If the Permittee uses an alternative method it must report the test method and QL on the discharge monitoring report. If the permittee is unable to obtain the required QL due to matrix effects, the Permittee must report the matrix-specific method detection level (MDL) and QL on the DMR. The permittee must also upload the QA/QC documentation from the lab on the QL development.

**B. MONITORING REQUIREMENTS FOR MODERATE LOADERS**

Each permittee listed in Table 8 must monitor influent and effluent in accordance with the following schedule and requirements specified in Table 15 and 16, respectively. Influent and effluent monitoring locations must be representative. Permittees may use the monitoring locations identified in their individual NPDES permit. If a Permittee conducts additional sampling of required parameters during the month, they must report all results on the monthly DMR.

**Table 15. Influent Sampling Requirements for Moderate Loaders**

Wastewater influent means the raw sewage flow from the collection system into the treatment facility. Sample the wastewater entering the headworks of the treatment plant excluding any side-stream returns from inside the plant, if possible.

The Permittee must collect total ammonia, nitrate plus nitrite, and TKN samples during the same sampling event.

Parameter	Units & Specifications	Minimum Sampling or Calculation Frequency	Analytical Method <sup>k</sup>	Laboratory Quantitation Level <sup>l</sup>	Sample Type
CBOD <sub>5</sub>	mg/L	1/week <sup>b</sup>	SM5210-B	2 mg/L	24-hour composite <sup>e</sup>
Total Ammonia	mg/L as N	1/week <sup>b</sup>	SM4500-NH <sub>3</sub> -B/C/D/E/F/G/H	0.02 mg/L	24-hour composite <sup>e</sup>
Nitrate plus Nitrite Nitrogen	mg/L as N	1/month <sup>c</sup>	SM4500-NO <sub>3</sub> -E/F/H	0.1 mg/L	24-hour composite <sup>e</sup>
Total Kjeldahl Nitrogen (TKN)	mg/L as N	1/month <sup>c</sup>	SM4500-N <sub>org</sub> -B/C and SM4500-NH <sub>3</sub> -B/C/D/E/F/G/H	0.3 mg/L	24-hour composite <sup>e</sup>

**Table 16. Effluent Sampling Requirements for Moderate Loaders**

Final wastewater effluent means wastewater exiting the last treatment process or operation. Typically, this is after or at the exit from the chlorine contact chamber or other disinfection process. The total ammonia, TKN, and nitrate plus nitrite samples must be taken during the same sampling event.

Parameter	Units & Specifications	Minimum Sampling or Calculation Frequency	Analytical Method <sup>k</sup>	Laboratory Quantitation Level <sup>l</sup>	Sample Type
Flow <sup>f</sup>	MGD	1/week <sup>b</sup>	-	-	Metered/recorded
CBOD <sub>5</sub> <sup>a</sup>	mg/L	1/week <sup>b</sup>	SM5210-B	2 mg/L	24-hour composite <sup>e</sup>
Total Organic Carbon	mg/L	1/quarter <sup>c</sup>	SM5310-B/C/D	1 mg/L	24-hour composite <sup>e</sup>
Total Ammonia	mg/L as N	1/week <sup>b</sup>	SM4500-NH <sub>3</sub> -B/C/D/E/F/G/H	0.02 mg/L	24-hour composite <sup>e</sup>
Nitrate plus Nitrite Nitrogen	mg/L as N	1/week <sup>b</sup>	SM4500-NO <sub>3</sub> -E/F/H	0.1 mg/L	24-hour composite <sup>e</sup>
TKN	mg/L as N	1/month <sup>c</sup>	SM4500-N <sub>org</sub> -B/C and SM4500-NH <sub>3</sub> -B/C/D/E/F/G/H	0.3 mg/L	24-hour composite <sup>e</sup>
Total Inorganic Nitrogen	mg/L as N	1/week <sup>b</sup>	-	-	Calculated <sup>g</sup>
Total Inorganic Nitrogen	Lbs/day	1/week <sup>b</sup>	-	-	Calculated <sup>h</sup>
Average Monthly Total Inorganic Nitrogen	Lbs	1/month <sup>c</sup>	-	-	Calculated <sup>i</sup>
Annual Total Inorganic Nitrogen, year to date	Lbs	1/month <sup>c</sup>	-	-	Calculated <sup>j</sup>

**Table 17. Footnotes for Influent and Effluent Monitoring Tables 15 and 16**

Footnote	Information
a	Take effluent samples for the CBOD <sub>5</sub> analysis before or after the disinfection process. If taken after disinfection and chlorine is used, dechlorinate and reseed the sample.
b	1/week means one (1) times during each week
c	1/month means one (1) time during each month
d	Quarterly sampling periods are January through March, April through June, July through September, and October through December. The Permittee must begin quarterly monitoring for the quarter beginning on <u>1/1/22</u> <u>4/1/22</u> <u>7/1/22</u> <u>10/1/22</u> and submit results by <u>4/15/22</u> , <u>7/15/22</u> , <u>10/15/22</u> , <u>1/15/22</u> .
e	24-hour <i>composite</i> means a series of individual samples collected over a 24-hour period into a single container, and analyzed as one sample.
f	Report daily flows only on days when collecting total ammonia and nitrate plus nitrite samples.
g	TIN (mg/L) as N = Total Ammonia (mg/L as N) + Nitrate plus Nitrite (mg/L as N)
h	Calculate mass concurrently with the respective concentration of a sample, using the following formula: Concentration (in mg/L) X daily flow (in MGD) X Conversion Factor (8.34) = lbs/day
i	Calculate the monthly average total inorganic nitrogen load (lbs as N) using the following equation: Monthly average TIN load (lbs as N) $= \left( \frac{\sum \text{Calculated TIN loads} \left( \frac{\text{lbs}}{\text{day}} \text{ as N} \right)}{\text{number of samples}} \right) \times \text{number of days in the calendar month}$
j	Calculate the annual total inorganic nitrogen, year to date using the following calculation: $\text{Annual TIN load (lbs as N)} = \sum \text{Monthly average TIN loads, to date}$
k	Or other equivalent EPA-approved method with the same or lower quantitation level
l	The Permittee must ensure laboratory results comply with the quantitation level (QL) specified in the table. However, if an alternative method from 40 CFR Part 136 is sufficient to produce measurable results in the sample, the Permittee may use that method for analysis. If the Permittee uses an alternative method it must report the test method and QL on the discharge monitoring report. If the permittee is unable to obtain the required QL due to matrix effects, the Permittee must report the matrix-specific method detection level (MDL) and QL on the DMR. The permittee must also upload the QA/QC documentation from the lab on the QL development.

**C. MONITORING REQUIREMENTS FOR SMALL LOADERS**

Each permittee listed in Table 11 must monitor influent and effluent in accordance with the following schedule and requirements specified in Table 18 and 19, respectively. Influent and effluent monitoring locations must be representative. Permittees may use the monitoring locations identified in their individual NPDES permit. If a Permittee conducts additional sampling of required parameters during the month, they must report all results on the monthly DMR.

**Table 18. Influent Sampling Requirements for Small Loaders**

Wastewater influent means the raw sewage flow from the collection system into the treatment facility. Sample the wastewater entering the headworks of the treatment plant excluding any side-stream returns from inside the plant, if possible.

The Permittee must collect total ammonia, nitrate plus nitrite, and TKN samples during the same sampling event.

Parameter	Units & Specifications	Minimum Sampling or Calculation Frequency	Analytical Method <sup>d</sup>	Laboratory Quantitation Level <sup>k</sup>	Sample Type
CBOD <sub>5</sub>	mg/L	2/month <sup>c</sup>	SM5210-B	2 mg/L	24-hour composite <sup>e</sup>
Total Ammonia	mg/L as N	2/month <sup>c</sup>	SM4500-NH <sub>3</sub> -B/C/D/E/F/G/H	0.02 mg/L	24-hour composite <sup>e</sup>
Nitrate plus Nitrite Nitrogen	mg/L as N	1/month <sup>b</sup>	SM4500-NO <sub>3</sub> -E/F/H	0.1 mg/L	24-hour composite <sup>e</sup>
Total Kjeldahl Nitrogen (TKN)	mg/L as N	1/month <sup>b</sup>	SM4500-N <sub>org</sub> -B/C and SM4500-NH <sub>3</sub> -B/C/D/E/F/G/H	0.3 mg/L	24-hour composite <sup>e</sup>



**Table 19. Effluent Sampling Requirements for Small Loaders**

Final wastewater effluent means wastewater exiting the last treatment process or operation. Typically, this is after or at the exit from the chlorine contact chamber or other disinfection process. The total ammonia, TKN, and nitrate plus nitrite samples must be taken during the same sampling event.

Parameter	Units & Specifications	Minimum Sampling or Calculation Frequency	Analytical Method <sup>k</sup>	Laboratory Quantitation Level <sup>l</sup>	Sample Type
Flow <sup>f</sup>	MGD	2/month <sup>c</sup>	--	--	Metered/recorded
CBOD <sub>5</sub> <sup>a</sup>	mg/L	2/month <sup>c</sup>	SM5210-B	2 mg/L	24-hour composite <sup>e</sup>
Total Organic Carbon	mg/L	1/quarter <sup>d</sup>	SM5310-B/C/D	1 mg/L	24-hour composite <sup>e</sup>
Total Ammonia	mg/L as N	2/month <sup>c</sup>	SM4500-NH <sub>3</sub> -B/C/D/E/F/G/H	0.02 mg/L	24-hour composite <sup>e</sup>
Nitrate plus Nitrite Nitrogen	mg/L as N	2/month <sup>c</sup>	SM4500-NO <sub>3</sub> -E/F/H	0.1 mg/L	24-hour composite <sup>e</sup>
TKN	mg/L as N	1/month <sup>b</sup>	SM4500-N <sub>org</sub> -B/C and SM4500-NH <sub>3</sub> -B/C/D/E/F/G/H	0.3 mg/L	24-hour composite <sup>e</sup>
Total Inorganic Nitrogen	mg/L as N	2/month <sup>c</sup>	--	--	Calculated <sup>g</sup>
Total Inorganic Nitrogen	Lbs/day	2/month <sup>c</sup>	--	--	Calculated <sup>h</sup>
Average Monthly Total Inorganic Nitrogen	Lbs	1/month <sup>b</sup>	--	--	Calculated <sup>i</sup>
Annual Total Inorganic Nitrogen, year to date	Lbs	1/month <sup>b</sup>	--	--	Calculated <sup>j</sup>

**Table 20. Footnotes for Influent and Effluent Monitoring Tables 18 and 19**

Footnote	Information
a	Take effluent samples for the CBOD <sub>5</sub> analysis before or after the disinfection process. If taken after disinfection and chlorine is used, dechlorinate and reseed the sample.
b	1/month means one (1) time during each month
c	2/month means two (2) times during each month and on a rotational basis throughout the days of the week, except weekends and holidays.
d	Quarterly sampling periods are January through March, April through June, July through September, and October through December. The Permittee must begin quarterly monitoring for the quarter beginning on <u>1/1/22</u> <u>4/1/22</u> <u>7/1/22</u> <u>10/1/22</u> and submit results by <u>4/15/22</u> , <u>7/15/22</u> , <u>10/15/22</u> , <u>1/15/22</u> .
e	24-hour composite means a series of individual samples collected over a 24-hour period into a single container, and analyzed as one sample.
f	Report daily flows only on days when collecting total ammonia and nitrate plus nitrite samples.
g	TIN (mg/L) as N = Total Ammonia (mg/L as N) + Nitrate plus Nitrite (mg/L as N)
h	Calculate mass concurrently with the respective concentration of a sample, using the following formula: Concentration (in mg/L) X daily flow (in MGD) X Conversion Factor (8.34) = lbs/day
i	Calculate the monthly average total inorganic nitrogen load (lbs as N) using the following equation: Monthly average TIN load (lbs as N) $= \left( \left( \sum \text{Calculated TIN loads} \left( \frac{\text{lbs}}{\text{day}} \text{ as N} \right) \right) / \text{number of samples} \right) \times \text{number of days in the calendar month}$
j	Calculate the annual total inorganic nitrogen, year to date using the following calculation: $\text{Annual TIN load (lbs as N)} = \sum \text{Monthly average TIN loads, to date}$
k	Or other equivalent EPA-approved method with the same or lower quantitation level
l	The Permittee must ensure laboratory results comply with the quantitation level (QL) specified in the table. However, if an alternative method from 40 CFR Part 136 is sufficient to produce measurable results in the sample, the Permittee may use that method for analysis. If the Permittee uses an alternative method it must report the test method and QL on the discharge monitoring report. If the permittee is unable to obtain the required QL due to matrix effects, the Permittee must report the matrix-specific method detection level (MDL) and QL on the DMR. The permittee must also upload the QA/QC documentation from the lab on the QL development.

#### D. SAMPLING AND ANALYTICAL PROCEDURES

Samples and measurements taken to meet the requirements of this permit must represent the volume and nature of the monitored parameters, including *representative sampling* of any unusual discharge or discharge condition, including authorized *bypasses*, upsets, and maintenance-related conditions affecting effluent quality.

Sampling and analytical methods used to meet the monitoring requirements specified in this permit must conform to the latest revision of the *Guidelines Establishing Test Procedures for the Analysis of Pollutants*<sup>12</sup> contained in 40 CFR 136<sup>13</sup> (or as applicable in 40 CFR subchapter N<sup>14</sup> [Parts 400-471] or 40 CFR subchapter O<sup>15</sup> [Parts 501-503]) unless otherwise specified in this permit.

#### E. FLOW MEASUREMENT

The Permittee must:

1. Select and use appropriate flow measurement and method consistent with accepted scientific practices.
2. Install, calibrate, and maintain these devices to ensure the accuracy of the measurements is consistent with the accepted industry standard, the manufacturer's recommendation, and approved O&M manual procedures for the device and the wastestream.
3. Establish a calibration frequency for each device or instrument in the Permittee's O&M Manual that conforms to the frequency recommended by the manufacturer.
4. Maintain calibration records for at least three years.

#### F. LABORATORY ACCREDITATION

1. The Permittee must ensure that all monitoring data required by Ecology for permit specified parameters is prepared by a laboratory registered or accredited under the provisions of chapter 173-50 WAC, *Accreditation of Environmental Laboratories*. Flow and internal process control parameters are exempt from this requirement.

#### G. REQUEST FOR REDUCTION IN MONITORING

1. The Permittee may request a reduction of the sampling frequency after twelve (12) months of monitoring by demonstrating that the distribution of

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<sup>12</sup> <https://www.ecfr.gov/cgi-bin/text-idx?SID=0e534d17f9783994a26ffee684d260c2&mc=true&node=pt40.25.136&rgn=div5>

<sup>13</sup> <https://www.ecfr.gov/cgi-bin/text-idx?SID=0e534d17f9783994a26ffee684d260c2&mc=true&node=pt40.25.136&rgn=div5>

<sup>14</sup> <https://www.ecfr.gov/cgi-bin/text-idx?SID=0e534d17f9783994a26ffee684d260c2&mc=true&tpl=/ecfrbrowse/Title40/40CsubchapN.tpl>

<sup>15</sup> <https://www.ecfr.gov/cgi-bin/text-idx?SID=0e534d17f9783994a26ffee684d260c2&mc=true&tpl=/ecfrbrowse/Title40/40CsubchapO.tpl>

concentrations can be accurately represented with a lower sampling frequency. Ecology will review each request and at its discretion grant the request in writing when it reissues the permit coverage or by a permit coverage modification.

2. The Permittee must:
  - a. Provide a written request.
  - b. Clearly state the parameters for which it is requesting reduced monitoring.
  - c. Clearly state the justification for the reduction.

#### **S8. DISCHARGES TO 303(D) OR TMDL WATER BODIES**

If EPA approves an applicable *Total Maximum Daily Load* (TMDL) that includes wasteload allocations for WWTPs owned and operated by the Permittee Ecology will address any permit requirements related to the approved TMDL in the Permittee's individual permit or through a modification of this permit.

## **S9. REPORTING AND RECORDKEEPING REQUIREMENTS**

### **A. DISCHARGE MONITORING REPORTS**

Permittees required to conduct **water quality** sampling in accordance with Special Conditions S7, and/or G12 (Additional Monitoring) must submit the results to Ecology. Permittees must submit the monthly DMR by the 15<sup>th</sup> day of the following month.

Permittees must submit monitoring data using Ecology's WQWebDMR program.

### **B. MONITORING REQUIREMENTS**

#### **1. Wastewater Sampling Frequency**

- a. The Permittee must sample both the influent and effluent discharge location at the frequencies listed in Condition S7.A, S7.B and S7.C.
- b. Samples must be representative of the flow and characteristics of the discharge.
- c. Sampling is not required outside of normal working hours or during unsafe conditions.

#### **2. Wastewater Sampling Locations**

Influent and effluent sampling locations must be representative. Permittees may use the compliance monitoring locations in their individual NPDES permit, prior to entry into waters of the state.

#### **3. Wastewater Sampling Documentation**

For each sample taken, the Permittee must record and retain the following information:

- a. Sample date and time
- b. Sample location
- c. Method of sampling, and method of sample preservation, if applicable
- d. Individual who performed the sampling

#### **4. Where wastewater monitoring requirements under this Permit mirror requirements in a Permittee's individual permit, the same result may be applied to both permits.**

#### **5. Additional Monitoring by the Permittee**

If the Permittee monitors any **pollutant** more frequently than required by this permit using test procedures specified by Condition S7, the Permittee must include the results of the extra monitoring in the calculation and reporting of the data submitted in the Permittee's DMR.

### **C. ANNUAL REPORT FOR DOMINANT LOADERS**

1. No later than March 31 of each year, each Permittee listed in Table 5 must submit an Annual Report documenting optimization and the adaptive management used at their WWTP. The Permittee must submit their first annual report by March 31, 2023 for the reporting period that begins on January 1, 2022 and lasts through December 31, 2022. All subsequent Annual Reports must use the reporting period of the previous calendar year unless otherwise specified.
2. Permittees must submit Annual reports electronically using Ecology's Water Quality Permitting Portal (WQWebPortal) available on Ecology's website, unless otherwise directed by Ecology.
3. The Annual Report documenting the Nutrient Optimization Plan for Permittees listed in Table 5 must include the following:
  - a. Submittal of the Annual Report form as provided by Ecology pursuant to S4.C, describing the status of the requirements of this Permit during the reporting period.
  - b. Attachments to the Annual Report including summaries, descriptions, reports and other information as required, or as applicable, to meet the requirements of this Permit during the reporting period, or as a required submittal. Refer to Appendix C for Annual Report questions.
  - c. Certification and signature pursuant to G2.D and notification of any changes to authorization pursuant to G2.C.

### **D. ANNUAL REPORT FOR MODERATE LOADERS**

1. No later than March 31 of each year, each Permittee listed in Table 8 must submit an Annual Report documenting optimization and the adaptive management used at their WWTP. The Permittee must submit their first annual report by March 31, 2023 for the reporting period that begins on January 1, 2022 and lasts through December 31, 2022. All subsequent Annual Reports must use the reporting period of the previous calendar year unless otherwise specified.
2. Permittees must submit Annual reports electronically using Ecology's Water Quality Permitting Portal (WQWebPortal) available on Ecology's website, unless otherwise directed by Ecology.
3. The Annual Report documenting the Nutrient Optimization Plan for Permittees listed in Table 8 must include the following:
  - a. Submittal of the Annual Report form as provided by Ecology pursuant to S5.C, describing the status of the requirements of this Permit during the reporting period.
  - b. Attachments to the Annual Report including summaries, descriptions, reports and other information as required, or as applicable, to meet the requirements of this Permit during the reporting period, or as a required submittal. Refer to Appendix D for Annual Report questions.

- c. Certification and signature pursuant to G2.D and notification of any changes to authorization pursuant to G2.C.

#### **E. REPORTING FOR SMALL LOADERS**

1. No later than March 31, 2026 each Permittee listed in Table 11 must submit an Optimization Report documenting optimization and the adaptive management used at their WWTP. The reporting period for this report will be from January 1, 2022 through December 31, 2025.
2. Permittees must submit the Nitrogen Optimization Report electronically using Ecology's Water Quality Permitting Portal (WQWebPortal) available on Ecology's website, unless otherwise directed by Ecology.
3. The electronic report documenting the optimization for Permittees listed in Table 11 must include the following:
  - a. Submittal of the Optimization Report form as provided by Ecology pursuant to S6.B, describing the status of the requirements of this Permit during the reporting period.
  - b. Attachments to the Optimization Report including summaries, descriptions, reports and other information as required, or as applicable, to meet the requirements of this Permit during the reporting period, or as a required submittal. Refer to Appendix E for Optimization Report questions.
  - c. Certification and signature pursuant to G2.D and notification of any changes to authorization pursuant to G2.C.

#### **F. RECORDS RETENTION**

The Permittee must retain records of all monitoring information (field notes, sampling results, etc.), optimization documents submitted with the annual or one-time report, and any other documentation of compliance with permit requirements for a minimum of five years following the termination of permit coverage. Such information must include all calibration and maintenance records, and records of all data used to complete the application for this permit. This period of retention must be extended during the course of any unresolved litigation regarding the discharge of pollutants by the Permittee or when requested by Ecology.

#### **G. NONCOMPLIANCE NOTIFICATION**

In the event the Permittee is unable to comply with any of the terms and conditions of this permit which may cause a threat to human health or the environment, including threats resulting from unanticipated *bypass* or upset, or does not comply with the narrative effluent requirements, the Permittee must:

1. Immediately, in no case more than 24 hours of becoming aware of the circumstances, notify Ecology of the failure to comply by calling the applicable regional office phone number (find at Ecology' [Report a Spill webpage](#)<sup>16</sup>).
2. Immediately take action to prevent the discharge/*pollution*, or otherwise stop or correct the noncompliance.
3. Submit a written report to Ecology using the WQWebPortal within five (5) days of the time the Permittee becomes aware of a reportable event. The report must contain:
  - a. A description of the noncompliance and its cause
  - b. The period of noncompliance including exact dates and times
  - c. If the noncompliance has not been corrected, the anticipated time it is expected to continue
  - d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance

Ecology may waive the written report on a case-by-case basis upon request if the Permittee has submitted a timely oral report.

Compliance with these requirements does not relieve the Permittee from responsibility to maintain continuous compliance with the terms and conditions of this permit or the resulting liability for failure to comply. Refer to Section G13 of this permit for specific information regarding non-compliance.

#### **H. ACCESS TO PLANS AND RECORDS**

1. The Permittee must retain the following permit documentation (reports and monitoring records) on site, or within reasonable access to the site, for use by the operator or for on-site review by Ecology:
  - a. Permit Coverage Letter
  - b. Puget Sound Nutrient General Permit
  - c. Discharge Monitoring Reports
  - d. Attachments to the Annual or Single Report as required in the Nitrogen Optimization Plan (NOP)
  - e. Nutrient Reduction Evaluation for Permittees listed in Tables 5 and 8 or AKART Analysis for Permittees listed in Table 11

#### **S10. PERMIT FEES**

The Permittee must pay permit fees assessed by Ecology. Fees for wastewater discharges covered under this permit are established by Chapter 173-224 WAC.

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<sup>16</sup> <https://ecology.wa.gov/About-us/Get-involved/Report-an-environmental-issue/Report-a-spill>



## GENERAL CONDITIONS

### G1. DISCHARGE VIOLATIONS

All discharges and activities authorized by this general permit must be consistent with the terms and conditions of this general permit. Failure to follow the corrective action requirement after discharge of TIN at a level that exceeds the action level identified and authorized by the general permit constitutes a violation of the terms and conditions of this permit.

### G2. SIGNATORY REQUIREMENTS

- A. All permit applications must bear a certification of correctness to be signed:
1. In the case of corporations, by a responsible corporate officer;
  2. In the case of a partnership, by a general partner of a partnership;
  3. In the case of sole proprietorship, by the proprietor; or
  4. In the case of a municipal, state, or other public facility, by either a principal executive officer or ranking elected official.
- B. All reports required by this permit and other information requested by Ecology must be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
1. The authorization is made in writing by a person described above and submitted to Ecology.
  2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters.
- C. Changes to authorization. If an authorization under paragraph G2.B.2 above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph G2.B.2 above must be submitted to Ecology prior to or together with any reports, information, or applications to be signed by an authorized representative.
- D. Certification. Any person signing a document under this section must make the following certification:
- E. "I certify under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

### **G3. RIGHT OF INSPECTION AND ENTRY**

The Permittee must allow an authorized representative of Ecology, upon the presentation of credentials and such other documents as may be required by law:

- A. To enter upon the premises where a discharge is located or where any records are kept under the terms and conditions of this permit.
- B. To have access to and copy – at reasonable times and at reasonable cost -- any records required to be kept under the terms and conditions of this permit.
- C. To inspect – at reasonable times – any facilities, equipment (including monitoring and control equipment), practices, methods, or operations regulated or required under this permit.
- D. To sample or monitor – at reasonable times – any substances or parameters at any location for purposes of assuring permit compliance or as otherwise authorized by the *Clean Water Act*.

### **G4. GENERAL PERMIT MODIFICATION AND REVOCATION**

This permit may be modified, revoked and reissued, or terminated in accordance with the provisions of Chapter 173-226 WAC. Grounds for modification, revocation and reissuance, or termination include, but are not limited to, the following:

- A. When a change occurs in the technology or practices for control or abatement of pollutants applicable to the category of dischargers covered under this permit.
- B. When effluent limitation guidelines or standards are promulgated pursuant to the CWA or Chapter 90.48 RCW, for the category of dischargers covered under this permit.
- C. When a water quality management plan containing requirements applicable to the category of dischargers covered under this permit is approved, or
- D. When information is obtained that indicates cumulative effects on the environment from dischargers covered under this permit are unacceptable.

### **G5. REVOCATION OF COVERAGE UNDER THE PERMIT**

Pursuant to Chapter 43.21B RCW and Chapter 173-226 WAC, the *Director* may terminate coverage for any discharger under this permit for cause. Cases where coverage may be terminated include, but are not limited to, the following:

- A. Violation of any term or condition of this permit.
- B. Obtaining coverage under this permit by misrepresentation or failure to disclose fully all relevant facts.
- C. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.
- D. Failure or refusal of the Permittee to allow entry as required in RCW 90.48.090.

- E. A determination that the permitted activity endangers human health or the environment, or contributes to water quality standards violations.
- F. Nonpayment of permit fees or penalties assessed pursuant to RCW 90.48.465 and Chapter 173-224 WAC.
- G. Failure of the Permittee to satisfy the public notice requirements of WAC 173-226-130(5), when applicable.

#### **G6. COMPLIANCE WITH OTHER LAWS AND STATUTES**

Nothing in this permit will be construed as excusing the Permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations.

#### **G7. DUTY TO REAPPLY**

The Permittee must apply for permit renewal at least 180 days prior to the specified expiration date of this permit.

#### **G8. TRANSFER OF GENERAL PERMIT COVERAGE**

In the event of any change in control or ownership of facilities from which the authorized discharge emanate, the Permittee must follow the procedures listed in their individual NPDES permit when notifying Ecology.

#### **G9. REMOVED SUBSTANCES**

The Permittee must not re-suspend or reintroduce collected screenings, grit, solids, sludges, filter backwash, or other pollutants removed in the course of treatment or control of wastewater to the final effluent stream for discharge to state waters.

#### **G10. DUTY TO PROVIDE INFORMATION**

The Permittee must submit to Ecology, within a reasonable time, all information that Ecology may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The Permittee must also submit to Ecology, upon request, copies of records required to be kept by this permit [40 CFR 122.41(h)].

#### **G11. OTHER REQUIREMENTS OF 40 CFR**

All other requirements of 40 CFR 122.41 and 122.42 are incorporated in this permit by reference.

#### **G12. ADDITIONAL MONITORING**

Ecology may establish specific monitoring requirements in addition to those contained in this permit by administrative order or permit modification.

### **G13. PENALTIES FOR VIOLATING PERMIT CONDITIONS**

Any person who is found guilty of willfully violating the terms and conditions of this permit shall be deemed guilty of a crime, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars (\$10,000) and costs of prosecution, and/or by imprisonment in the discretion of the court. Each day upon which a willful violation occurs may be deemed a separate and additional violation.

Any person who violates the terms and conditions of a waste discharge permit shall incur, in addition to any other penalty as provided by law, a civil penalty in the amount of up to ten thousand dollars (\$10,000) for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be deemed to be a separate and distinct violation.

### **G14. PROPERTY RIGHTS**

This permit does not convey any property rights of any sort, or any exclusive privilege.

### **G15. DUTY TO COMPLY**

The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

### **G16. TOXIC POLLUTANTS**

The Permittee must comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if this permit has not yet been modified to incorporate the requirement.

### **G17. PENALTIES FOR TAMPERING**

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than two years per violation, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this condition, punishment shall be a fine of not more than \$20,000 per day of violation, or imprisonment of not more than four (4) years, or both.

### **G18. REPORTING PLANNED CHANGES**

Report planned changes in a manner consistent with the individual permit.

### **G19. REPORTING OTHER INFORMATION**

Where the Permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to Ecology, it must promptly submit such facts or information.

## **G20. REPORTING ANTICIPATED NON-COMPLIANCE**

The Permittee must give advance notice to Ecology by submission of a new application or supplement thereto at least one hundred and eighty (180) days prior to commencement of such discharges, of any facility expansions, or other planned changes, such as process modifications, in the permitted facility which may result in noncompliance with permit limits or conditions. Any maintenance of facilities, which might necessitate unavoidable interruption of operation and degradation of effluent quality, must be scheduled during non-critical water quality periods and carried out in a manner approved by Ecology.

## **G21. APPEALS**

- A. The terms and conditions of this general permit, as they apply to the appropriate class of dischargers, are subject to appeal by any person within 30 days of issuance of this general permit, in accordance with Chapter 43.21B RCW, and Chapter 173-226 WAC.
- B. The terms and conditions of this general permit, as they apply to an individual discharger, are appealable in accordance with Chapter 43.21B RCW within 30 days of the effective date of coverage of that discharger. Consideration of an appeal of general permit coverage of an individual discharger is limited to the general permit's applicability or nonapplicability to that individual discharger.
- C. The appeal of general permit coverage of an individual discharger does not affect any other dischargers covered under this general permit. If the terms and conditions of this general permit are found to be inapplicable to any individual discharger(s), the matter shall be remanded to Ecology for consideration of issuance of an individual permit or permits.

## **G22. SEVERABILITY**

The provisions of this permit are severable, and if any provision of this permit, or application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

## **G23. BYPASS PROHIBITED**

This permit prohibits a bypass, which is the intentional diversion of waste streams from any portion of a treatment facility.

See bypass prohibitions included in each jurisdiction's individual NPDES permit.

## **APPENDIX A – DEFINITIONS**

**303(d) Listed Waters** means waterbodies listed as Category 5 on Washington State’s Water Quality Assessment.

**Action Level** means an indicator value used to determine the effectiveness of best management practices at a WWTPs. Action levels are not water quality criteria or effluent limits by themselves but indicators of treatment optimization.

**Adaptive Management** means the process of incorporating new information into optimization implementation to ensure effective attainment of documented goals or the facility specific action level.

**AKART** means acronym for “all known, available, and reasonable methods of prevention, control, and treatment.” AKART represents the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants and controlling pollution associated with a discharge.

**Alternative Restoration Plan** means a near-term plan, or description of actions, with a schedule and milestones, that is more immediately beneficial or practicable to achieving water quality standards.

**Applicant** means an owner or **operator in responsible charge** seeking coverage under this permit.

**Best Management Practices (BMPs)** means schedules of activities, prohibitions of practices, maintenance procedures, and other physical, structural and/or managerial practices to prevent or reduce the pollution of waters of the State.

**Bubbled action level** means the sum of individual action levels for all WWTPs in the same discharger category under a single jurisdiction’s ownership.

**Bypass** means the intentional diversion of waste streams from any portion of a treatment facility.

**Day** means a period of 24 consecutive hours.

**Clean Water Act (CWA)** means the Federal Water Pollution Control Act enacted by Public Law 92-500, as amended by Public Laws 95-217, 95-576, 96-483, and 97-117; USC 1251 et seq.

**Composite (also Composite Sample)** means a mixture of grab samples collected at the same sampling point at different times, formed either by continuous sampling or by mixing discrete samples. May be "time-composite" (collected at constant time intervals) or "flow-proportional" (collected either as a constant sample volume at time intervals proportional to stream flow, or collected by increasing the volume of each aliquot as the flow increases while maintaining a constant time interval between the aliquots).

**Director** means the Director of the Washington Department of Ecology or his/her authorized representative.

**Discharger** means an owner or operator of any facility or activity subject to regulation under Chapter 90.48 RCW or the Federal Clean Water Act.

**Domestic Wastewater** means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places, together with such ground water infiltration or surface waters as may be present.

**Dominant loader** means domestic WWTPs discharging more than 2,000 lbs/day TIN. Cumulatively, dominant loaders constitute > 80% of the domestic point source TIN load.

**Ecology** means the Washington State Department of Ecology.

**Ground Water** means water in a saturated zone or stratum beneath the land surface or a surface water body.

**Greater Puget Sound Region** means the marine area where human nutrient loads, from Washington Waters of the Salish Sea, contribute to waters not meeting marine DO standards. The GPS region include the Northern Bays (Bellingham, Samish, and Padilla Bays) as well as Puget Sound Proper, which are the marine waters south of the entrance of Admiralty Inlet (Whidbey Basin, Main Basin, South Sound, and Hood Canal).

**Moderate loader** means a domestic WWTP discharging between 100 and 2,000 lbs/day TIN. Cumulatively, moderate loaders constitute roughly 19 % of the domestic point source TIN load.

**National Pollutant Discharge Elimination System (NPDES)** means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the Federal Clean Water Act, for the discharge of pollutants to surface waters of the State from point sources. These permits are referred to as NPDES permits and, in Washington State, are administered by the Washington Department of Ecology.

**Notice of Intent (NOI)** means the application for, or a request for coverage under this general permit pursuant to WAC 173-226-200.

**Operator** means any individual who performs routine duties, onsite at a wastewater treatment plant that affect plant performance or effluent quality.

**Operator in Responsible Charge** means the individual who is designated by the owner as the person routinely onsite and in direct charge of the overall operation and maintenance of a wastewater treatment plant.

**Optimization** (also treatment optimization) means a best management practice (BMP) resulting in the refinement of WWTP operations that lead to improved effluent water quality and/or treatment efficiencies.

**Outfall** means the location where the site's wastewater discharges to surface water.

**Overburdened community** means a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts, and includes, but is not limited to, highly impacted communities as defined in RCW 19.405.020.

**Owner** means a town or city, a county, a sewer district, board of public utilities, association, municipality or other public body.

**Permittee** means an entity that receives notice of coverage under this general permit.

**Point source** means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, and container from which pollutants are or may be discharged to surface waters of the State. This term does not include return flows from irrigated agriculture.

**Pollutant** means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, domestic sewage sludge (biosolids), munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste.

**Pollution** means contamination or other alteration of the physical, chemical, or biological properties of waters of the State; including change in temperature, taste, color, turbidity, or odor of the waters; or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the State as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare; or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wild animals, birds, fish or other aquatic life.

**Receiving water** means the water body at the point of discharge. If the discharge is to a storm sewer system, either surface or subsurface, the receiving water is the water body to which the storm system discharges. Systems designed primarily for other purposes such as for ground water drainage, redirecting stream natural flows, or for conveyance of irrigation water/return flows that coincidentally convey stormwater are considered the receiving water.

**Representative sample** (also **representative sampling**) means a wastewater sample which represents the flow and characteristics of the discharge. Representative samples may be a grab sample, a time-proportionate **composite sample**, or a flow proportionate sample.

**Salish Sea** means Puget Sound, Strait of Georgia, and Strait of Juan de Fuca, including their connecting channels and adjoining waters.



**SEPA** (State Environmental Policy Act) means the Washington State Law, RCW 43.21C.020, intended to prevent or eliminate damage to the environment.

**Septage** means, for the purposes of this permit, any liquid or semisolid removed from a septic tank, cesspool, vault toilet or similar source which concentrates wastes or to which chemicals have been added.

**Site** means the land where any "facility" is physically located.

**Small Loader** means a domestic WWTP discharging less than 100 lbs/day TIN. Cumulatively, small loaders constitute < 1% of the domestic point source TIN load.

**Surface Waters of the State** includes lakes, rivers, ponds, streams, inland waters, salt waters, and all other surface waters and water courses within the jurisdiction of the state of Washington.

**Total Inorganic Nitrogen (TIN)** means the sum of ammonia, nitrate, and nitrite. It includes dissolved and particulate fractions.

**Total Maximum Daily Load (TMDL)** means a calculation of the maximum amount of a pollutant that a water body can receive and still meet state water quality standards. Percentages of the total maximum daily load are allocated to the various pollutant sources. A TMDL is the sum of the allowable loads of a single pollutant from all contributing point and nonpoint sources. The TMDL calculations must include a "margin of safety" to ensure that the water body can be protected in case there are unforeseen events or unknown sources of the pollutant. The calculation must also account for reasonable variation in water quality.

**Washington Waters of the Salish Sea** means areas of the Salish Sea subject to Washington State's Water Pollution Control Act (Chapter 90.48 RCW)

**Wasteload Allocation (WLA)** means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality based effluent limitation (40 CFR 130.2[h]).

**Water quality** means the chemical, physical, and biological characteristics of water, usually with respect to its suitability for a particular purpose.

**Waters of the State** includes those waters as defined as "waters of the United States" in 40 CFR Subpart 122.2 within the geographic boundaries of Washington State and "waters of the State" as defined in Chapter 90.48 RCW, which include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and water courses within the jurisdiction of the state of Washington.

**Week** (same as **Calendar Week**) means a period of seven consecutive days starting at 12:01 a.m. (0:01 hours) on Sunday.

## **APPENDIX B – ACRONYMS**

<b>AKART</b>	All Known, Available, and Reasonable Methods of Prevention, Control, and Treatment
<b>BMP</b>	Best Management Practice
<b>CFR</b>	Code of Federal Regulations
<b>CWA</b>	Clean Water Act
<b>DIN</b>	Dissolved Inorganic Nitrogen
<b>DMR</b>	Discharge Monitoring Report
<b>EPA</b>	Environmental Protection Agency
<b>FR</b>	Federal Register
<b>NOI</b>	Notice of Intent
<b>NOT</b>	Notice of Termination
<b>NPDES</b>	National Pollutant Discharge Elimination System
<b>NRP</b>	Nutrient Reduction Plan
<b>PSNF</b>	Puget Sound Nutrient Forum
<b>RCW</b>	Revised Code of Washington
<b>SEPA</b>	State Environmental Policy Act
<b>TBEL</b>	Technology Based Effluent Limit
<b>TIN</b>	Total Inorganic Nitrogen
<b>TMDL</b>	Total Maximum Daily Load
<b>USEPA</b>	United States Environmental Protection Agency
<b>WAC</b>	Washington Administrative Code
<b>WQ</b>	Water Quality
<b>WQBEL</b>	Water Quality Based Effluent Limit
<b>WWTP</b>	Wastewater Treatment Plant

## APPENDIX C – ANNUAL REPORT QUESTIONS FOR DOMINANT LOADERS

*Permittees are required to submit annual reports online, pursuant to Special Condition S9.C.*

1. Did your facility stay below the Action Level in S4.b, Table 5 or Table 6 for the jurisdiction with a bubbled action level? (S4.C.2.b.i)
  - a. Attach a document listing the contribution of each of your individual facilities to the total bubble allocation for the reporting period. (S4.C.2.b.i)
2. Did your facility stay below a 10 mg/L annual average TIN concentration? (S4.C.2.b.i) **(If Q1 = Y and Q2 = Y, then no further questions).**
3. **Attach** a document describing the assessment method applied to evaluate the existing treatment process. (S4.C.1.a)
4. What is your pre-optimization TIN removal rate, expressed as a percentage? (S4.c.1.a.i)
5. **Attach** a document explaining your initial approach for optimization. (S4.C.1.a)
6. Did you maintain and/or update your assessment approach after year 1?(S4.C.1.a.ii)
7. Do viable optimization strategies exist for your current treatment process? (S4.C.1.b)
8. Did all of the potential optimization strategies you identified and evaluated for S4.C.1.b have a reasonable implementation cost and timeframe? (S4.C.1.b)
9. ATTACH a document describing your preferred optimization strategy for implementation in 2022 (due July 1) (S4.C.1.c)
10. What is the expected performance for the selected optimization strategy? (S4.C.1.c)
11. **Attach** a document describing optimization plan implementation including start date, schedule for full implementation, initial costs, and challenges including impacts to other measures of treatment plant performance. (S4.C.2.a)
12. What TIN removal rate was observed during the reporting period? (S4.C.2.b.ii)
13. **Attach** a document describing your ongoing investigations to reduce influent TIN loads from septage handling practices, commercial, dense residential and industrial sources. (S4.C.3.a, S4.C.3.b)
14. **(If Q1=N and Q7 = Y) Attach** document including: factors causing the WWTP to not meet the optimization goal, whether modifications to the strategy could improve performance, and whether a different strategy or combination of strategies may be more appropriate. Also, document changes to the optimization strategy either through the selection of the new optimization strategy and new performance metric or existing implementation refinement. Revise the expected performance if electing to keep the existing strategy. Provide rationale for no changes if Permittee proposes no changes to the optimization strategy (S4.D.1.a and S4.D.1.b)
15. **(If Q1 = No and Q7 = No) Attach** abbreviated engineering report or technical memo (due 12 months after documenting action level exceedance or determination that no optimization strategies exist). (S4.D.2)

16. **(If Q1 = No in two prior years)** Did you implement the Engineering Report as planned, starting after Ecology's approval? (S4.D.2.a)
17. Did you submit the required Nutrient Reduction Evaluation on or before 12/31/2026? If no, **date** the document was or will be provided. (S4.E)
18. Did you submit discharge monitoring reports according to the required schedule? If no, **attach** a document describing/listing the missing records and corrective actions taken/or planned. (S7, S9.A)
19. Are you retaining all applicable records? If no, **attach** a document describing/listing the missing records and corrective actions taken and/or planned. (S9.F)
20. Did you follow non-compliance notification requirements? If no, **attach** a document describing the non-compliance and the corrective actions taken and/or planned. (S9.G)

## **APPENDIX D – ANNUAL REPORT QUESTIONS FOR MODERATE LOADERS**

*Permittees are required to submit annual reports online, pursuant to Special Condition S9.D.*

1. Did your facility stay below the Action Level in S5.b, Table 8 or Table 9 for the jurisdiction with a bubbled action level? (S5.C.2.b.i)
  - a. Attach a document listing the contribution of each of your individual facilities to the total bubble allocation for the reporting period. (S5.C.2.b.i)
2. Did your facility stay below a 10 mg/L annual average TIN concentration? (S5.C.2.b.i) **(If Q1 =Y and Q2 = Y, then no further questions).**
3. **Attach** a document describing the assessment method applied to evaluate the existing treatment process. (S5.C.1.a)
4. What is your pre-optimization TIN removal rate, expressed as a percentage? (S5.c.1.a.i)
5. **Attach** a document explaining your initial approach for optimization. (S5.C.1.a)
6. Did you maintain and/or update your assessment approach after year 1?(S5.C.1.a.ii)
7. Do viable optimization strategies exist for your current treatment process? (S5.C.1.b)
8. Did all of the potential optimization strategies you identified and evaluated for S5.C.1.b have a reasonable implementation cost and timeframe? (S5.C.1.b)
9. **ATTACH** a document describing your preferred optimization strategy for implementation in 2022 (selection due July 1) (S5.C.1.c)
10. What is the expected performance for the selected optimization strategy? (S5.C.1.c)
11. **Attach** a document describing optimization plan implementation including start date, schedule for full implementation, initial costs, and challenges including impacts to other measures of treatment plant performance. (S5.C.2.a)
12. What TIN removal rate was observed during the reporting period? (S5.C.2.b.ii)
13. **Attach** a document describing your ongoing investigations to reduce influent TIN loads from septage handling practices, commercial, dense residential and industrial sources. (S5.C.3.a, S5.C.3.b)
14. **(If Q1=N and Q7 = Y) Attach** document including: factors causing the WWTP to not meet the optimization goal, whether modifications to the strategy could improve performance, and whether a different strategy or combination of strategies may be more appropriate. Also, document changes to the optimization strategy either thorough the selection of the new optimization strategy and new performance metric or existing implementation refinement. Revise the expected performance if electing to keep the existing strategy. Provide rationale for no changes if Permittee proposes no changes to the optimization strategy (S5.D.1.a and S5.D.1.b)
15. **(If Q1 = No and Q7 = No) Attach** abbreviated engineering report or technical memo (due 12 months after documenting action level exceedance or determination that no optimization strategies exist). (S5.D.2)

16. **(If Q1 = No in two prior years)** Did you implement the Engineering Report as planned, starting after Ecology's approval? (S5.D.2.a)
17. Did you submit the required Nutrient Reduction Evaluation on or before 12/31/2026? If no, **date** the document was or will be provided. (S5.E)
18. Did you submit discharge monitoring reports according to the required schedule? If no, **attach** a document describing/listing the missing records and corrective actions taken/or planned. (S7, S9.A)
19. Are you retaining all applicable records? If no, **attach** a document describing/listing the missing records and corrective actions taken and/or planned. (S9.F)
20. Did you follow non-compliance notification requirements? If no, **attach** a document describing the non-compliance and the corrective actions taken and/or planned. (S9.G)

## APPENDIX E – ONE TIME REPORT QUESTIONS FOR SMALL LOADERS

Permittees are required to submit the single report online, pursuant to Special Condition S9.E.

1. **Attach** a document describing your initial assessment process, your optimization goal, the list of prioritized optimization strategies identified, and the strategy implemented in 2022 (S6.B.1.b). If any optimization strategies were found to not have a reasonable implementation cost or timeframe (S6.B.2.a.iv), include description of the feasibility and cost analysis that led to exclusion of any approach(es). (S6.B.1.a, S6.B.1.b)
2. Did your plant meet or exceed the pre-optimization empirical TIN removal rate in each year of this permit and also maintain or reduce TIN loads? If no, **attach** a document describing how you revised your optimization strategy in response to the evaluation in each of the prior permit years, and document your adaptive management steps, your assessment process, and the new optimization strategy or strategies you identified, and your updated optimization goal(s) and performance metric(s). (S6.B.2.b.ii, S6.B.2.c)
3. Did your facility stay below a 10 mg/L annual average TIN concentration? (S6.B.2.b.i) (If Q2 =Y and Q3 = Y, then no further questions)
4. What is your pre-optimization empirical TIN removal rate? (S6.B.1.a.i)
5. Did you maintain your reassessment approach after year 1? If no, **attach** a document describing assessment revisions that occurred each year over the permit term. (S6.B.1.a.ii)
6. What is your expected TIN removal with the preferred optimization strategy? (S6.B.1.b)
7. **Attach** a document describing optimization implementation including costs, time for full implementation, start date, challenges, and impacts to treatment performance. (S6.B.2.a)
8. What was the TIN removal rate observed each year during the reporting period? (S6.B.2.b.ii)
9. **Attach** a document describing your ongoing investigations to reduce influent TIN loads from septage handling practices, commercial, dense residential and industrial sources. (S6.B.3)
10. Did you submit the required AKART analysis on or before 12/31/2025? If no, **date** document was or will be provided. (S6.C)
11. Did you submit discharge monitoring reports according to the required schedule? If no, **attach** a document describing the missed monitoring activities and the corrective action taken. (S7, S9.A)
12. Are you retaining all applicable records? If no, **attach** a document describing the missing records and the corrective action taken and/or planned. (S9.F)
13. Did you follow non-compliance notification requirements? If no, **attach** a document describing the non-compliance and the corrective actions taken and/or planned. (S9.G)

## Appendix B



# **FACT SHEET FOR THE PUGET SOUND NUTRIENT DRAFT GENERAL PERMIT**

**A NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM AND  
STATE WASTE DISCHARGE GENERAL PERMIT**

**ISSUANCE DATE: DECEMBER 1, 2021**

**EFFECTIVE DATE: JANUARY 1, 2022**



**DEPARTMENT OF  
ECOLOGY**  
State of Washington

## SUMMARY

This fact sheet is a companion document to the draft National **Pollutant Discharge Elimination System** (NPDES) Permit for Discharges from municipal wastewater treatment plants in the **Washington waters of the Salish Sea** contributing to **impairments** within the **greater Puget Sound region** (Puget Sound Nutrient General Permit, or PSNGP). The **permit** authorizes the discharge of municipal wastewater containing **total inorganic nitrogen**. Municipal wastewater refers to wastewater primarily from domestic (household) sources as well as commercial, industrial, and institutional sources that are treated at a **publicly owned treatment works (POTW)**. The PSNGP limits the **discharge** of pollutants to **surface waters** under the authority of the Federal Water Pollution Control Act (U.S.C.S. 1251) and limits the discharge of **pollutants** to surface water under the authority of Chapter 90.48 RCW.

Washington State Department of Ecology (**Ecology**) announced a preliminary determination to develop a **general permit** for municipal wastewater containing total inorganic nitrogen on January 30, 2020. The United States Environmental Protection Agency (**EPA**) treats municipal wastewater discharged directly into the greater Puget Sound as a **point source** in **40 Code of Federal Register (CFR) 122.2**. Discharges from point sources require an NPDES permit. Ecology currently issues individual NPDES permits to municipal wastewater treatment plants. The PSNGP addresses the discharge of nutrient **pollution** from POTWs that hold an existing, individual NPDES permit.

The Washington State Department of Ecology is proposing to issue the PSNGP. This would be the first issuance of the PSNGP. This Fact Sheet explains the presence of nutrients in domestic sewage, Ecology's decisions on limiting total inorganic nitrogen in municipal wastewater, and the regulatory and technical basis for those decisions.

This Fact Sheet is a companion document to the draft permit that provides information to help interested parties better understand the technical issues associated with the permit. Ecology generally will not revise a fact sheet following public comment but will prepare a response to comments. This fact sheet does not contain any independently enforceable requirements. The PSNGP contains all of the requirements applicable to **dischargers**. In case of any conflict between the fact sheet and the PSNGP, the terms of the PSNGP govern.

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## INTRODUCTION

The Federal **Clean Water Act** (CWA, 1972, and later modifications, 1977, 1981, and 1987) established **water quality** goals for the navigable (surface) waters of the United States. One of the mechanisms for achieving the goals of the Clean Water Act is the National Pollutant Discharge Elimination System permit program (NPDES permits), which is administered by the U.S. Environmental Protection Agency (EPA). The EPA has delegated responsibility to administer the NPDES permit program to the State of Washington on the basis of Chapter 90.48 of the Revised Code of Washington (RCW), which defines the Department of Ecology's authority and obligations in administering the wastewater discharge permit program.

The regulations adopted by the state include procedures for issuing general permits (Chapter 173-226 of the Washington Administrative Code [WAC]), water quality criteria for surface waters (Chapters 173-201A WAC), and sediment management standards (Chapter 173-204 WAC). These regulations require a permit to be issued before discharge of wastewater to **waters of the state** is allowed. The regulations also establish the basis for effluent limitations and other requirements, which are to be included in the permit. One of the requirements (WAC 173-226-110) for issuing a general permit under the NPDES permit program is the preparation of a draft permit and an accompanying fact sheet. The regulations also require public notice of the draft permit for at least 30 days before the permit is issued (WAC 173-226-130). The fact sheet and draft permit are available for review (see *Appendix A – Public Involvement* of the fact sheet for more detail on the Public Notice procedures).

After the public comment period has closed, Ecology will summarize the substantive comments and prepare a response to each comment. The summary and response to comments will become part of the file on the permit. Parties submitting comments will receive a copy of Ecology's response. Comments and the resulting changes to the permit will be summarized in an appendix to this fact sheet, *Appendix C – Response to Comments*.



## BACKGROUND INFORMATION

### HISTORY

Following extensive, scientific investigations regarding existing dissolved oxygen (DO) impairments from excess nutrient loading to Puget Sound, Ecology issued a public notice of a Preliminary Determination to develop a Puget Sound Nutrient General Permit (PSNGP) on August 21, 2019. During the 60 day period which closed October 21, 2019, Ecology received public comments on whether the Agency should move forward with the development of a general permit to control nutrient discharges from existing municipal wastewater treatment plants (WWTPs or POTWs) in *Washington Waters of the Salish Sea* that contribute to impairments within the greater Puget Sound region.

Ecology received 49 comment letters during the Preliminary Determination period. Overall, comments received in support of the PSNGP carried a message that WWTPs should implement nutrient controls in a timely fashion, regardless of permitting approach. While not all comments were favorable to the GP approach, a theme of conditional support of a collaborative effort to reduce nutrients emerged.

After carefully considering comments received, Ecology announced a preliminary determination to develop a general permit for municipal treatment plants discharging to Puget Sound at the *Puget Sound Nutrient Forum (PSNF)* on January 30, 2020. As part of that announcement, Ecology also led a stakeholder engagement exercise to receive input on the type of collaborative approach the agency should use to develop the permit. Ecology proposed using an Advisory Committee and solicited feedback on the composition and roles of that committee during the January 2020 PSNF. After receiving that feedback, Ecology released a follow up online nomination survey for volunteers willing to represent the different regional interests on the PSNGP's Advisory Committee (AC).

In March 2020, Ecology convened a 14 person permit Advisory Committee representing regional treatment plants, state agencies (including Ecology), the EPA and the environmental community. Ecology invited Tribal involvement in the advisory committee and left a seat at the table for a representative. However, the Tribes preferred to engage directly with the Governor's office and through staff level meetings held by the Northwest Indian Fisheries Commission's Coordinated Tribal Water Quality Program. Table 1, below, shows the original AC members selected to help advise Ecology on conceptual permitting concepts and conditions.

**Table 1. Original PSNGP Advisory Committee Members**

Name	Affiliation	Role	Geography
Mark Sadler	City of Everett, Public Works	Operations Superintendent	North Central

<b>Name</b>	<b>Affiliation</b>	<b>Role</b>	<b>Geography</b>
Joe Grogan	Town of Coupeville	Utility Superintendent	North Central
Dan Thompson	City of Tacoma	Division Manager	South Central
Rebecca Singer	King County DNRP, Wastewater Treatment Division	Resource Recovery Manager	South Central
Patrick Kongsli	Pierce County Planning and Public Works –Sewer Division/PNCWA Olympia Section	Sewer Division Maintenance and Operations Manager	South Central
Wendy Steffensen	LOTT Clean Water Alliance	Environmental Project Manager	South Sound
Pete Tjemsland	City of Sequim	Utilities Manager and Operator	Strait of Juan de Fuca
Jeff Clarke	Washington Association of Sewer and Water Districts	Past President	Puget Sound Wide
Bruce Wishart	Puget Soundkeeper	Policy Lead	Puget Sound Wide
Mindy Roberts	Washington Environmental Council	Puget Sound Program Director	Puget Sound Wide
Jenny Wu	EPA	Engineer, Permit Writer	Puget Sound Wide
Valerie Smith	Department of Commerce	Senior Planner	Puget Sound Wide
Chip Anderson	Lummi Tribal Water and Sewer District	District Manager	North Sound

Name	Affiliation	Role	Geography
Tribe - Unfilled			

Ecology hosted virtual AC meetings monthly from March 2020 through October 2020. Each meeting worked towards producing a Final Recommendations document that captured agreements and dissenting opinions on each of the conceptual approaches discussed. In addition to AC meetings, different caucuses formed to discuss the permit concepts during separate meetings. The four separate caucus groups included: one for environmental groups, state agencies, federal agencies and utilities. The utility caucus provided Ecology with an alternative permitting proposal that spanned several permit cycles. Ecology did not use this proposal in developing the draft permit but appreciates the effort utilities participating in that caucus made to get their opinions to the agency. The primary reason Ecology did not use this proposal stems from the Agency’s immediate need to address nutrients in **domestic wastewater** discharges, starting with the first permit cycle.

On January 27, 2021, Ecology released the preliminary draft of the PSNGP to the public and started a 47-day informal comment period that ended on March 15, 2021. Ecology received sixty-seven individual comment letters on the preliminary draft in addition to multiple copies of identical form letters from various action networks. The comments illustrated the different perspectives of the commenters, which included individuals, organizations, Tribes, municipalities and other interested parties. Ecology carefully reviewed the comments and feedback from the public and made revisions to the permitting concepts released in the preliminary draft. The revisions constitute the formal draft of the PSNGP.

Ecology released the formal draft of the Puget Sound Nutrient General Permit, the accompanying fact sheet providing the statement of basis, and the **Notice of Intent** (application) on June 16, 2021. This release starts the formal comment period that ends on August 2, 2021. The comment period includes two virtual public hearings. Please see Appendix A – Public Involvement Information for more information about the public hearings. Ecology will consider the comments made on the formal draft before making a permit issuance decision on the first general permit in late summer or fall 2021. A formal response to comments will accompany the final permit.

## GENERAL PERMIT APPROACH

A general permit to address multiple point source discharges from municipal wastewater treatment plants in a specific geographic area is an appropriate permitting approach for the following reasons:

- A general permit is an efficient method to establish the essential regulatory requirements appropriate for controlling total inorganic nitrogen in municipal wastewater.

- A general permit allows Ecology to handle permit applications within the state of Washington more efficiently.
- A general permit is consistent with EPA's four-tier permitting strategy, the purpose of which is to use the flexibility provided by the Clean Water Act in designing a workable and reasonable permitting system.

In addition, critical benefits to a general permit for municipal dischargers include an equitable roll out of nutrient controls in the region and a shared basis for working together to develop treatment solutions that may ultimately include a water quality trading framework. Implementing nutrient controls through existing, individual NPDES permits would stagger the rollout across the region placing dischargers on different timelines and delaying improvements in water quality.

A general permit is designed to provide coverage for a group of related facilities or operations of a specific industry type or group of industries. It is appropriate when the discharge characteristics are sufficiently similar, and a standard set of permit requirements can effectively provide environmental protection and comply with **water quality standards** for discharges. Ecology determined that discharge of total inorganic nitrogen from municipal WWTPs is best controlled by coverage under a General Permit with the Preliminary Determination. All **marine point sources** proposed for coverage under this General Permit are located in the same geographic region (i.e., Washington waters of the Salish Sea). Discharges from these plants are similar in nature as they are all generated by the treatment of municipal wastewater. Therefore, this general permit will appropriately implement a similar application of narrative effluent limits and monitoring requirements for this class of point sources. If Ecology determines that pollutants from a specific **facility** are not managed or controlled by the general permit to protect state water quality standards, then Ecology may elect to use the individual permit as the preferred regulatory mechanism.

## WASTEWATER CHARACTERIZATION AND SUBJECT DISCHARGERS

This draft general permit proposes to cover municipal WWTPs that own and operate secondary and advanced secondary wastewater treatment facilities as described in their individual NPDES permits. Municipal sewage includes wastes generated by residential and commercial buildings, institutions and some industries within a municipality's sewer shed. It contains nutrients (nitrogen and phosphorus), suspended solids, and bacteria in addition to having an oxygen demand that varies depending on the strength of the wastewater. Domestic wastewater may also contain toxic pollutants due to pass through from household chemicals, industrial sources or individual use of pharmaceuticals and personal care products. If not properly treated, these pollutants can enter the **receiving water** causing impacts to water quality. This permit authorizes the discharge of treated municipal effluent containing total inorganic nitrogen. Existing individual NPDES permits held by all **Permittees** contain requirements to restrict other pollutants found in the wastewater effluent.

The draft general permit supersedes effluent requirements related to total inorganic nitrogen in the individual NPDES permits with the exception of ammonia effluent limitations developed for control of ammonia toxicity.

Dischargers that must apply for coverage under this draft general permit are listed in Table 2, below. Ecology has prioritized permit reissuance schedules in the Northwest and Southwest Regions working towards minimizing the current permit backlog. Updating individual NPDES permits for Permittees proposed for coverage under the PSNGP is a priority for the agency.

**Table 2. Proposed PSNGP Permittees**

<b>Wastewater Treatment Plant</b>	<b>Individual NPDES Permit Number</b>	<b>Individual Permit Issuance Date</b>
Alderwood STP	WA0020826	11/27/2018
Anacortes WWTP	WA0020257	11/9/2017
Bainbridge Island WWTP	WA0020907	6/29/2017
Birch Bay Sewage Treatment Plant (STP)	WA0029556	1/29/2021
Boston Harbor STP	WA0040291	12/15/2011
Bremerton WWTP	WA0029289	10/30/2018
Chambers Creek WWTP	WA0039624	5/1/2008
Clallam Bay WWTP	WA0024431	11/19/2018
Clallam Bay Corrections Center WWTP	WA0039845	1/25/2017
Coupeville STP	WA0029378	6/19/2019
Eastsound Orcas Village WWTP	WA0030911	12/11/2015
Eastsound Sewer and Water District WWTP	WA0030571	6/29/2016
Edmonds STP	WA0024058	10/24/2014

<b>Wastewater Treatment Plant</b>	<b>Individual NPDES Permit Number</b>	<b>Individual Permit Issuance Date</b>
Everett STP	WA0024490	9/30/2015
Fisherman Bay STP	WA0030589	2/1/2017
Friday Harbor STP	WA0023582	8/21/2017
Gig Harbor WWTP	WA0023957	3/13/2015
Hartstene Pointe STP	WA0038377	12/31/2017
King County Brightwater WWTP	WA0032247	2/26/2018
King County South WWTP	WA0029581	7/1/2015
King County Vashon WWTP	WA0022527	1/16/2017
King County West Point WWTP	WA0029181	12/19/2014
Kitsap County Central Kitsap WWTP	WA0030520	6/29/2017
Kitsap County Kingston WWTP	WA0032077	9/30/2015
Kitsap County Manchester WWTP	WA0023701	1/19/2018
Kitsap County Sewer District #7 Water Reclamation Facility (WRF)	WA0030317	6/24/2016
La Conner STP	WA0022446	2/19/2019
Lake Stevens Sewer District WWTP	WA0020893	10/6/2017
Lakota WWTP	WA0022624	9/17/2018
Langley STP	WA0020702	7/30/2014
Lighthouse Point WRF/Blaine STP	WA0022641	6/25/2019

Wastewater Treatment Plant	Individual NPDES Permit Number	Individual Permit Issuance Date
LOTT Budd Inlet WRF	WA0037061	2/16/2018
Lynnwood STP	WA0024031	2/8/2019
Marysville STP	WA0022497	11/1/2017
McNeil Island Special Commitment Center WWTP	WA0040002	7/1/2016
Midway Sewer District WWTP	WA0020958	11/4/2015
Miller Creek WWTP	WA0022764	10/1/2018
Mt Vernon WWTP	WA0024074	1/31/2017
Mukilteo Water and Wastewater District WWTP	WA0023396	10/31/2018
Oak Harbor STP	WA0020567	4/27/2018
Penn Cove WWTP	WA0029386	12/5/2014
Port Angeles WWTP	WA0023973	1/7/2016
Port Orchard WWTP (South Kitsap WRF)	WA0020346	11/11/2018
Port Townsend STP	WA0037052	11/13/2015
Post Point WWTP (Bellingham STP)	WA0023744	6/19/2014
Redondo WWTP	WA0023451	9/26/2018
Rustlewood WWTP	WA0038075	10/8/2014
Salmon Creek WWTP	WA0022772	6/1/2018
Sekiu WWTP	WA0024449	9/4/2014

Wastewater Treatment Plant	Individual NPDES Permit Number	Individual Permit Issuance Date
Sequim WRF	WA0022349	3/18/2014
Shelton WWTP	WA0023345	3/14/2008
Skagit County Sewer District 2 Big Lake WWTP	WA0030597	1/29/2021
Snohomish WWTP	WA0029548	5/21/2018
Stanwood STP	WA0020290	9/23/2016
Tacoma Central No. 1 WWTP	WA0037087	10/6/2010
Tacoma North No. 3 WWTP	WA0037214	6/4/2009
Tamoshan STP	WA0037290	10/26/2017
WA Parks Larrabee WWTP	WA0023787	10/13/2016

## SEPA COMPLIANCE

State law exempts the issuance, reissuance, or modification of a wastewater discharge permit for an existing discharge from the **State Environmental Policy Act (SEPA)** process as long as the permit contains conditions that are no less stringent than Federal and State rules and regulations (RCW 43.21C.0383). This exemption applies to the issuance of this general permit and to existing discharges, not to new discharges.

### ADDITIONAL SEPA REVIEW FOR PERMITTEES

A modification of permit coverage for physical alterations, modifications, or additions to the wastewater treatment process that are substantially different from the original design and/or expands the existing treatment footprint requires SEPA compliance. Optimization does not require additional SEPA review. Additional SEPA review may be necessary if Ecology determines that the modification is outside of the scope of the initial SEPA evaluation conducted. WAC 197-11-880 allows for exemption from SEPA review for actions that must be undertaken to avoid an imminent threat to public health or safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation.



## PERMIT LIMITS

Section 502(11) of the CWA defines "effluent limitation" as *any restriction on the quantity, rate, and concentration of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance*. Effluent limitations are among the permit conditions and limitations prescribed in NPDES permits issued under Section 402(a) of the Act, 33 U.S.C. §1342(a).

Federal and state regulations require that discharges from existing facilities must, at a minimum, meet technology-based effluent limitations reflecting, among other things, the technological capability of Permittees to control pollutants in their discharges that are economically achievable. Specifically, state laws (RCW 90.48.010, 90.52.040 and 90.54.020) require the use of "all known, available and reasonable methods of prevention, control and treatment" (**AKART**).

**Water quality-based effluent limits (WQBELs)** are required by CWA Section 301(b)(1)(C) and, in Washington State, are based on compliance with the Surface Water Quality Standards (Chapter 173-201A WAC), Ground Water Standards (Chapter 173-200 WAC), Sediment Quality Standards (Chapter 173-204 WAC) or the Federal water quality criteria applicable to Washington (40 CFR Part 135.45). Ecology chooses the more stringent of these two limits (technology or water quality-based) for each of the parameters of concern when drafting NPDES permits. [CWA sections 301(a) and (b)].

Effluent limits in NPDES permits may be expressed as numeric or non-numeric discharge requirements. Under EPA's regulations, non-numeric effluent limits are authorized in lieu of numeric limits, where "[n]umeric effluent limitations are infeasible." [40 CFR 122.44(k)(3).] Courts have recognized that there are circumstances when numeric effluent limits are infeasible and have held that EPA may issue permits with conditions (for example, BMPs) designed to reduce the level of effluent discharges to acceptable levels:

*Natural Res. Def. Council, Inc. v. EPA*, 673 F.2d 400, 403 (D.C. Cir. 1982) (noting that "section 502(11) defines 'effluent limitation' as 'any restriction' on the amounts of pollutants discharged, not just a numerical restriction"; holding that section of CWA authorizing courts of appeals to review promulgation of "any effluent limitation or other limitation" did not confine the court's review to the EPA's establishment of numerical limitations on pollutant discharges, but instead authorized review of other limitations under the definition) (emphasis added).

In *Natural Res. Def. Council, Inc. v. Costle*, 568 F.2d 1369 (D.C. Cir. 1977), the D.C. Circuit stressed that when numerical effluent limitations are infeasible, EPA may issue permits with conditions designed to reduce the level of effluent discharges to acceptable levels.

## TECHNOLOGY-BASED LIMITATIONS

### TECHNOLOGY-BASED EFFLUENT LIMITATIONS FOR DOMESTIC WASTEWATER FACILITIES

Federal and state regulations define secondary treatment requirements for domestic wastewater treatment plants. These effluent limits are provided in 40 C.F.R. §133 (Federal) and in chapter 173-221 WAC (state).

Secondary treatment requirements are the minimum level of control that must be imposed in a permit for a publicly owned treatment work (POTW)(40 CFR § 125.3(a)). State domestic wastewater discharge standards based on secondary treatment in chapter 173-221 WAC include minimum effluent quality requirements for five-day biochemical oxygen demand (BOD<sub>5</sub>), **total suspended solids** (TSS), pH and fecal coliform. The state regulation supplements 40 C.F.R. §133 and takes precedence over the federal regulation because it is more stringent in its application.

Since the promulgation of the rule, Ecology's permit writers have applied requirements in Chapter 173-221 WAC to all domestic WWTPs. When developing an NPDES permit, permit writers must consider technology-based limitations and also water-quality based effluent limitations and select the more stringent of the two (40 CFR §122.44(a)(1) and 125.3). Additional water quality based effluent limits (WQBEL) are developed when they are necessary to protect the receiving water.

#### *Municipal Wastewater Discharges and AKART*

While Ecology believes that the requirements in Chapter 173-221 WAC do constitute a level of treatment that is reasonable for domestic WWTPs, the concept of Washington's AKART rule for domestic WWTPs has started to evolve. This is primarily due to advancements in treatment technology that are capable of removing some pollutants at a higher level than traditional secondary treatment.

At the same time, DO deficits caused by nutrient pollution in surface waters across the state of Washington have become much more pervasive. While this comes from a combination of point and non-point sources, domestic WWTPs discharging at secondary treatment levels contribute to the nutrient over enrichment. This is because the conventional secondary treatment system design does not substantially remove enough nutrients (e.g., nitrogen and phosphorus) from the effluent to avoid over enrichment of the receiving water.

The prevalence of **303(d)** listings related to depleted dissolved oxygen levels from increased levels of nitrogen and phosphorus requires Ecology to reconsider the basis of AKART for domestic WWTPs. It is apparent that the agency must start to consider refining what constitutes AKART for this treatment category. The AKART provision needs evaluation on a case-by-case basis given its direct ties to economic impact. What constitutes AKART at one facility may be different at the next. This is especially true when considering the size differences between WWTPs, available space for expansion at the existing location, costs of

additional treatment processes, the rate payer base and any identified hardship that may exist due to the median household income in the community.

All POTWs proposed for coverage under this general permit currently discharge under the conditions of individual NPDES permits and are, at a minimum, required to meet TBELs as defined in 173-221 WAC. Ecology is not proposing additional TBELs as part of this general permit coverage. However, the proposed permit will require each facility to evaluate AKART for nitrogen removal and to submit a report documenting this evaluation to Ecology. Specific requirements for the analysis can be found later in this fact sheet in the Description of Special Conditions section and in Special Conditions S4.D and S5.D in the draft permit.

### *Non-Routine Discharges*

Municipal wastewater discharges are fairly predictable in nature. This permit does not authorize non-routine or unanticipated discharges. Permittees must follow procedures listed in their individual permit in the event of a non-routine discharge.

## **SURFACE WATER QUALITY LIMITS**

In order to protect existing water quality and preserve the designated *beneficial uses* of Washington's surface waters, WAC 173-201A-510 states that waste discharge permits shall be conditioned such that the discharge will not cause a violation of established Surface Water Quality Standards. The Washington State Surface Water Quality Standards (Chapter 173-201A WAC) is a state regulation designed to protect the *designated uses* of the surface waters of the state. Surface water quality-based effluent limitations may be based on an individual waste load allocation (WLA), a WLA developed during a basin-wide *total maximum daily loading* study (TMDL) or on a WLA developed as part of an *alternative restoration plan*.

### NUMERIC CRITERIA FOR THE PROTECTION OF AQUATIC LIFE

"Numeric" water quality criteria are numerical values set forth in the State of Washington's Water Quality Standards for Surface Waters (Chapter 173-201A WAC). They specify the maximum levels of pollutants allowed in receiving waters to be protective of aquatic life. Numeric criteria set forth in the Water Quality Standards are used along with chemical and physical data for the wastewater and receiving water to derive the effluent limits in a discharge permit. When surface water quality-based limits are more stringent or potentially more stringent than technology-based limitations, they must be used in a discharge permit.

### NUMERIC CRITERIA FOR THE PROTECTION OF HUMAN HEALTH

The EPA has promulgated numeric water quality criteria for the protection of human health that are applicable to Washington State (40 CFR 131.45) in addition to human health criteria listed in Chapter 173-201A WAC. These criteria are designed to protect humans from cancer and other diseases, primarily from fish and shellfish consumption and drinking water from

surface waters. This proposed permit does not contain any numeric effluent limits for the protection of human health. Each POTW's individual NPDES permit contains a facility specific assessment of the facility's potential to violate human health criteria. Any necessary effluent limits for these pollutants are located in the Permittee's individual NPDES permit.

#### NARRATIVE CRITERIA

In addition to numeric criteria, "narrative" water quality criteria (WAC 173-201A-260) limit toxic, radioactive, or deleterious material concentrations below those which have the potential to adversely affect characteristic water uses, cause acute or chronic toxicity to biota, impair aesthetic values, or adversely affect human health. Narrative criteria protect the specific beneficial uses of all fresh water and marine water in the state of Washington.

#### ANTIDegradation

The purpose of Washington's **Antidegradation** Policy (WAC 173-201A-300-330; 2006) is to:

- Restore and maintain the highest possible quality of the surface waters of Washington.
- Describe situations under which water quality may be lowered from its current condition.
- Apply to human activities that are likely to have an impact on the water quality of surface water.
- Ensure that all human activities likely to contribute to a lowering of water quality, at a minimum, apply all known, available, and reasonable methods of prevention, control, and treatment (AKART).
- Apply three Tiers of protection (described below) for surface waters of the state.

Tier I ensures existing and designated uses are maintained and protected and applies to all waters and all sources of pollutions. Tier II ensures that waters of a higher quality than the criteria assigned are not degraded unless such lowering of water quality is necessary and in the overriding public interest. Tier II applies only to a specific list of polluting activities. Tier III prevents the degradation of waters formally listed as "outstanding resource waters," and applies to all sources of pollution.

Ecology considered Tier I and Tier II in this permit and determined there are no discharges under this permit to formally designated "outstanding resource waters."

Ecology always considers Tier I when it issues a permit. Applying both technology based permit limits and water quality-based limits to point source discharges meets Tier 1 requirements and the fact sheet describes how this permit meets those requirements.

Tier II requirements for general permits are given in 173-201A-320(6) as follows:

*(a) Individual activities covered under these general permits or programs will not require a Tier II analysis.*

*(b) The department will describe in writing how the general permit or control program meets the antidegradation requirements of this section.*

*(c) The department recognizes that many water quality protection programs and their associated control technologies are in a continual state of improvement and development. As a result, information regarding the existence, effectiveness, or costs of control practices for reducing pollution and meeting the water quality standards may be incomplete. In these instances, the antidegradation requirements of this section can be considered met for general permits and programs that have a formal process to select, develop, adopt, and refine control practices for protecting water quality and meeting the intent of this section. This adaptive process must:*

*(i) Ensure that information is developed and used expeditiously to revise permit or program requirements;*

*(ii) Review and refine management and control programs in cycles not to exceed five years or the period of permit reissuance; and*

*(iii) Include a plan that describes how information will be obtained and used to ensure full compliance with this chapter. The plan must be developed and documented in advance of permit or program approval under this section.*

*(7) All authorizations under this section must still comply with the provisions of Tier I (WAC 173-201A-310).*

This fact sheet describes how the permit and control program meets the antidegradation requirement. Ecology used a formal process to develop the PSNGP and will do so every five years for reissuance. The process includes selecting, developing, adopting, and refining control practices to protect water quality and meet the intent of WAC 173-201A-320. All NPDES permits, including the PSNGP, are effective for a fixed term not to exceed five years (40 CFR §122.25). Each time Ecology reissues the PSNGP, the agency will evaluate the effluent limits and permit conditions to determine if the revised permit should incorporate additional or more stringent requirements. This evaluation includes a review of new data and input from the public.

#### CRITICAL CONDITIONS

Surface water quality-based limits are derived for the water body's **critical condition**, which represents the receiving water and waste discharge condition with the highest potential for adverse impact on the aquatic biota, human health, and existing or characteristic water body uses. The factors include the flow and background level of toxic substances in the receiving water and the flow and concentration of toxic substances in the discharge.

Acute conditions are changes in the physical, chemical, or biological environment which are expected or demonstrated to result in injury or death to an organism as a result of short-term exposure to the substance or detrimental environmental condition.

Chronic conditions are changes in the physical, chemical, or biological environment which are expected or demonstrated to result in injury or death to an organism as a result of repeated or constant exposure over an extended period of time to a substance or detrimental environmental condition.

Ecology has not established a critical condition for the Puget Sound region at this time. Longer residence times occur in Puget Sound during summer months when *watershed inflows* subside. This period, which includes longer days and warmer temperatures generally create what Ecology considers a critical season. At present, Ecology is working to determine how to meet standards during all parts of the year everywhere within Puget Sound. The draft Nutrient Reduction Plan will address the definition of a critical condition for the receiving water. Narrative limits will apply for the entire first permit cycle and the critical condition for the receiving water will be considered as part of the second permit iteration.

#### MIXING ZONES

The Water Quality Standards allow Ecology to authorize *mixing zones* around a point of discharge in establishing surface water quality-based effluent limits. Ecology may authorize both "acute" and "chronic" mixing zones for pollutants as long as the discharge does not interfere with the designated uses of the receiving waterbody. The concentration of pollutants at the boundary of these mixing zones may not exceed the numerical criteria for that type of zone. Mixing zones can only be authorized for discharges that meet AKART and in accordance with other mixing zone requirements of WAC 173-201A-400.

The proposed permit does not authorize mixing zones specific to total inorganic nitrogen. Since a general permit must apply to a number of different *sites*, precise mixing zones and the resultant dilution are not applicable to facilities covered under a general permit.

Mixing zone authorizations in accordance with WAC 173-201A-400 can be found in the POTW's individual NPDES permit.

#### DESCRIPTION OF THE RECEIVING WATER

The draft general permit applies to POTWs directly discharging to Washington waters of the Salish Sea that cumulatively contribute to impairments within the greater Puget Sound region. Discharges will enter waters assigned designated uses intended to protect aquatic life and human health.

## DESIGNATED USES AND SURFACE WATER QUALITY CRITERIA

Sections 173-201A-200 through -260 WAC define the applicable surface water quality criteria for protection of aquatic biota. These criteria were established to protect existing and potential uses of the surface waters of the state. Consideration was also given to both the natural water quality and its limitations. The surface water quality criteria are an important component of the state's Surface Water Quality Standards (Chapter 173-201A WAC).

Washington's marine aquatic life uses are broken into four primary categories created to provide protection for indigenous fish and non-fish aquatic species living in waters of the state. Aquatic life designations in Puget Sound span each of the categories given the complexity of the receiving water and its sensitive ecoregions.

- Extraordinary quality salmonid and other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning
- Excellent quality salmonid rearing and migration; other fish migration, rearing, and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.
- Good quality salmonid migration and rearing; other fish migration, rearing and spawning; clam, oyster, and mussel rearing and spawning; crustaceans and other shellfish (crabs, shrimp, crayfish, scallops, etc.) rearing and spawning.
- Fair quality salmonid and other fish migration

Each of these aquatic life designations has associated numeric criteria for temperature, dissolved oxygen, turbidity and pH. This draft permit specifically regulates total inorganic nitrogen due to its impact on DO. See individual NPDES permits and their accompanying fact sheets for discussions regarding how each discharge meets numeric criteria for other parameters.

Table 3, below shows the lowest 1-day minimum DO criteria for each of the marine aquatic life uses as presented in Table 210(1)(d), in Chapter 173-201A WAC. The standards also include a provision to account for natural conditions. *“When a water body’s DO is lower than the criteria in Table 210(1)(d) (or within 0.2 mg/L of the criteria) and that condition is due to natural conditions, then human actions considered cumulatively may not cause the DO of that waterbody to decrease more than 0.2 mg/L (Chapter 173-201A-210(1)(d)(i) WAC).”*

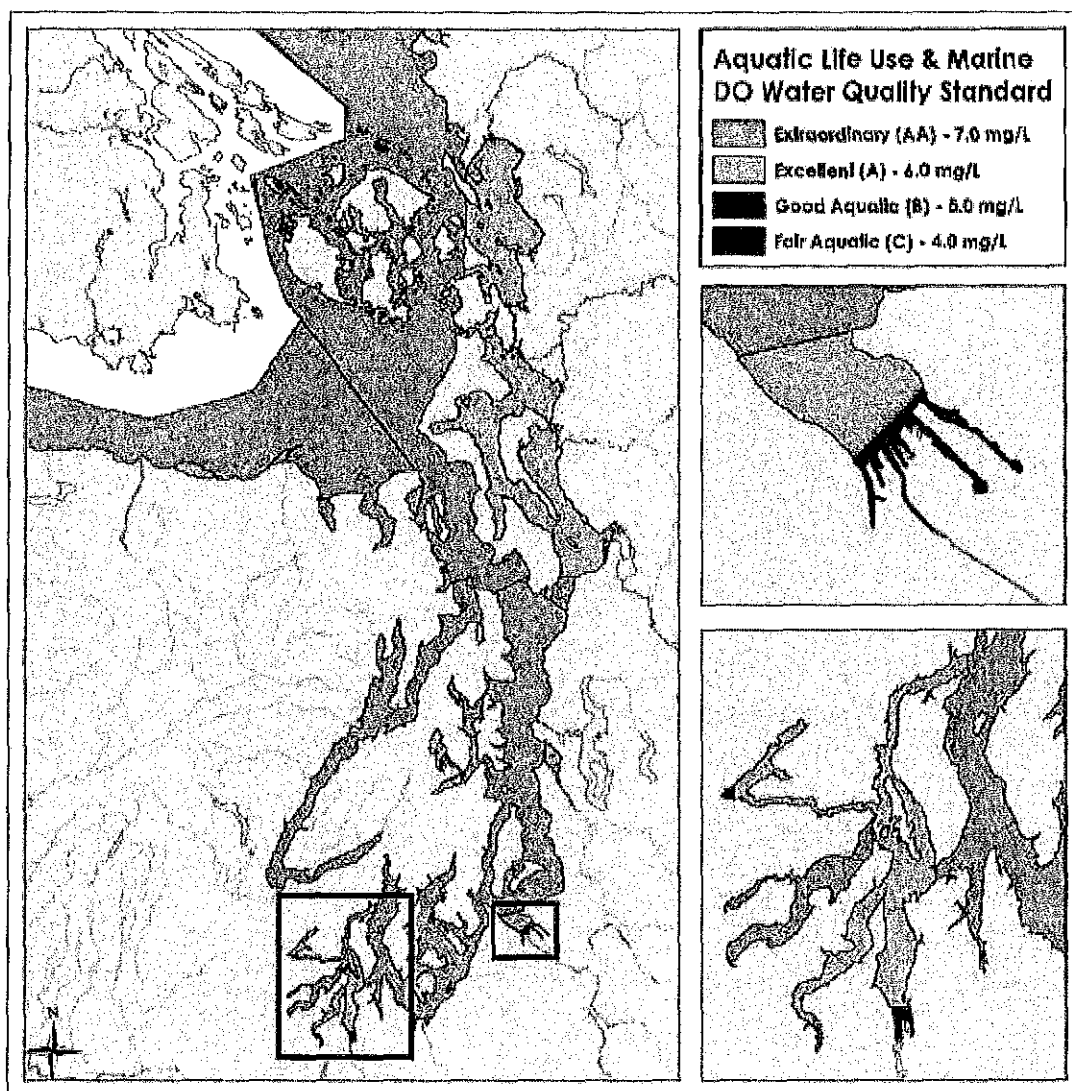
**Table 3. Marine Aquatic Life Uses and Corresponding DO Criteria**

<b>Designated Use</b>	<b>DO Criteria, 1 day min</b>
Extraordinary Quality	7.0 mg/L
Excellent Quality	6.0 mg/L
Good Quality	5.0 mg/L
Fair Quality	4.0 mg/L

Ecology established marine DO standards at levels that support healthy and robust aquatic species and limit the cumulative impacts of human actions to prevent measurable depletion of DO from the natural condition. This draft permit supports the goals of the overall Puget Sound Nutrient Reduction Project by establishing requirements based on attaining the numeric marine DO criteria and minimizing cumulative human impacts.

Figure 1, shows where numeric water quality standards for DO apply for the Washington Waters of the Salish Sea, including Puget Sound.





**Figure 1. Dissolved Oxygen Standards in Puget Sound**

Application of the numeric marine DO surface water quality criteria to a discharge requires site-specific analysis of the discharge and the receiving water. This analysis is part of the modeling work being completed by Ecology and will inform future numeric water quality based permit limits for nutrients that impact DO concentrations. See the [Consideration of Narrative Water Quality Based Effluent Limits for Numeric Criteria](#) section of this fact sheet for more information about narrative water quality effluent limits proposed for the first permit cycle.

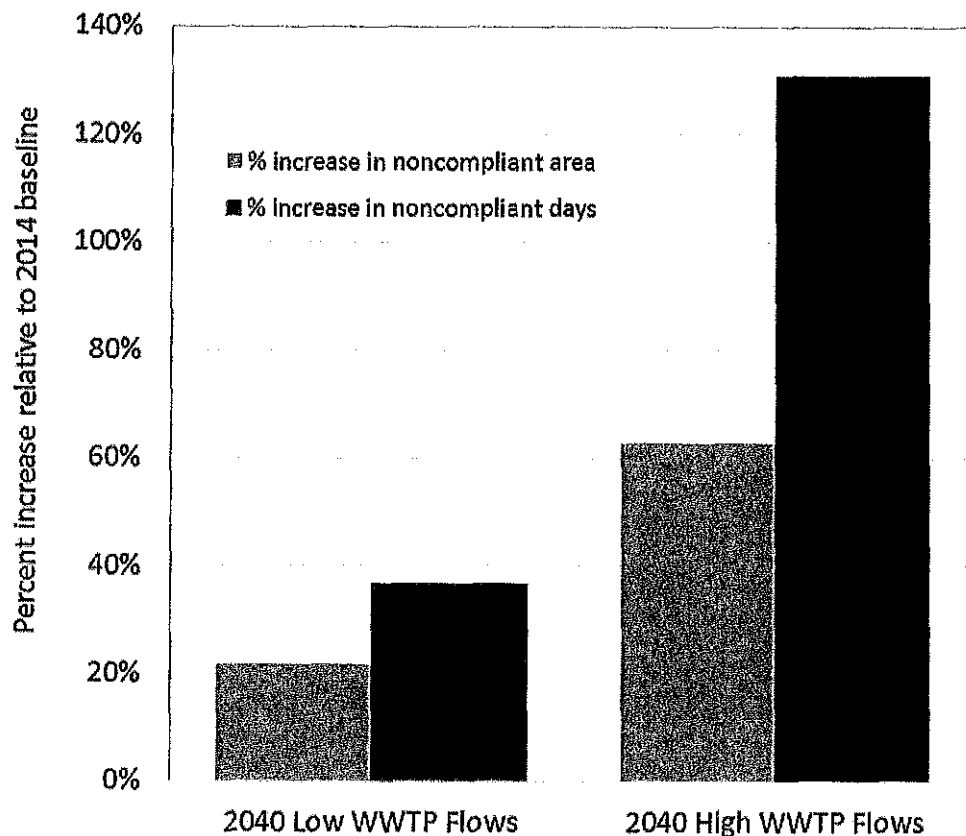
#### HISTORY OF DISSOLVED OXYGEN IMPAIRMENTS AND INVESTIGATIONS

The 1996/1998 Water Quality Assessment included the first 303(d) DO listings for portions of Southern Puget Sound based on failure to meet the numeric portion of the DO standard. Following this initial listing, Ecology began to study how nutrients from both point and non-

point sources affected DO in the south sound region (Roberts, et al., 2008). Recent studies led Ecology to determine that anthropogenic (human) sources of nutrients lead to instances of low DO concentrations throughout Puget Sound (Khangaonkar et al., 2018, Pelletier et al., 2017, Ahmed et al., 2014, Roberts et al., 2014, Khangaonkar et al., 2012 b, Albertson et al., 2002) exacerbating those effects in areas that may have naturally occurring lower DO and creating additional conditions (areas or duration) where water quality standards are not met.

Newton and Van Voorhis (2002) documented that nitrogen is a limiting nutrient for Puget Sound. While other nutrients like carbon and phosphorus may drive some algal productivity, the available amount of nitrogen primarily controls the rate of algae and aquatic plant growth. The open ocean boundary will always deliver the highest nitrogen load to the *Salish Sea*. The additional nitrogen load from human inputs, above the natural background, exacerbates the nutrient over- enrichment and leads to *eutrophication*.

The Salish Sea's shallow bays and terminal inlets, like Budd Inlet in South Puget Sound, are the most sensitive to eutrophication due to diminished flushing rates when compared to other basins with higher rates of water exchange (Ahmed et al., 2017, Khangaonkar et al., 2012 b, Sutherland et al., 2011). Eutrophication will continue to worsen as the regional population increases if actions to reduce human nutrient sources from domestic wastewater, agricultural runoff and other land-use activities are not taken (Khangaonkar et al., 2019, Roberts et al., 2014). The SSM Year 1 Tech Memo (currently in publication) found that failure to address human nutrient loads from domestic WWTPs will increase both the number of days and the size of areas that do not meet the numeric DO standard in both high and low population estimates for 2040 (Ahmed et al., 2021). Figure 2, shows the percent increase from projected low and high flow estimates based on 2040 population.



**Figure 2. Predicted increase in the DO noncompliant areas and days in Washington Waters of the Salish Sea from projected 2040 low and high WWTP flows.**

These projections, on top of the existing DO impairments currently observed in Puget Sound, indicate a trajectory that will disrupt the already fragile ecosystem. After years of working to develop and understand the science, Ecology started the ***Puget Sound Nutrient Source Reduction Project (PSNSRP)*** in 2018. The PSNSRP aims to collaboratively address reducing point and nonpoint sources of nutrients in our region so that the DO water quality criteria and aquatic life designated uses are met by 2040.

*The Salish Sea Model (SSM)*

As previously discussed, nitrogen is the limiting nutrient driving eutrophication and DO impairment within inlets and embayments in Washington’s portion of the Salish Sea. In addition to nitrogen, discharges of organic carbon into marine waters may also directly reduce DO from aerobic bacteria decomposition. Without numeric surface water quality standards for nitrogen or organic carbon, Ecology uses DO as the indicator pollutant to monitor the deleterious effects of excess nitrogen and organic carbon loading in marine waters. Ecology used water quality monitoring data to identify waters on the 303(d) list, but separating the impairment due to

cumulative human nutrient loads requires use of a mechanistic model to determine impacts to marine water quality in a complex system like the Salish Sea.

Originally developed as the Puget Sound Model (PSM), the state of the art *Salish Sea Model* (SSM) developed by Pacific Northwest National Labs (PNNL) in collaboration with Ecology has become the computer modeling tool used by Ecology to evaluate the physical, chemical and biological relationships within the Salish Sea. This modeling tool provides Ecology with the ability to predict compliance with marine water quality standards and evaluate nutrient (nitrogen and organic carbon) reduction options for improving and restoring Washington waters of the Salish Sea to meet water quality goals (McCarthy, 2018, Ahmed, et. al, 2019). Over its various development phases, the SSM has endured extensive internal and external peer reviews and constitutes the best available science for regulatory decisions made by Ecology.

On March 9, 2021, Ben Cope (2021) from EPA Region 10 discussed regulatory models with the Puget Sound Nutrient Forum (PSNF) and more specifically, the application of the SSM for regulatory purposes. According to EPA, mechanistic models have a history of being used for regulatory decision making as they provide the scientific basis for quantifying impacts from pollution sources upon source identification. Use of a mechanistic model also allows for the evaluation of different outcomes based on different pollutant reduction alternatives. Models also enable scientists to make predictions of future conditions and system changes such as impacts from increased populations or climate.

A well-developed model is one that has thorough documentation through both development and application. This includes making sure that all data review processes, equations and assumptions are clearly identified. Input data also needs to be comprehensive in nature for all sources being evaluated. Peer review and public review are very important steps when using a model for regulatory purposes. These review processes work to increase transparency about the model's limitations and identify any uncertainty that may result from its application. A summary of the model development and application approach, with its inherent transparency and peer review phases is described below.

During the first phase of model development, Ecology convened a technical advisory committee (TAC) comprised of representatives from interested groups and agencies including NOAA, USGS, EPA, King County, People for Puget Sound, and University of Washington. The TAC participated in a series of events, including a workshop. Appendix A of the first QAPP (2009) for this effort contains details about what was covered on the November 4, 2008 TAC workshop, which, along with recommendations from PNNL, set the direction for the long-term project. In 2010, TAC members offered peer review comments about a November 2009 report which provided details about the first version of the intermediate scale model. In addition, EPA contracted with Tetra Tech as an independent third party to peer review the intermediate scale hydrodynamic version of the model. In 2012, Khangaonkar et al., 2012 a,b published a report and an article in a scientific, peer reviewed journal focused on the water quality calibration of the intermediate scale model. At this point, the project team acknowledged that incorporation of a dynamic

sediment diagenesis module would result in a more robust modeling system. The project team also decided to incorporate prediction capability for carbonate system parameters. In 2014, QAPPs were developed for that purpose, and feedback was solicited from internal and external regional scientists. In 2017, the project team completed incorporation of sediment diagenesis and the carbonate system module (Pelletier et al., 2017, Khangaonkar et al., 2018). Additionally, PNNL began work on expanding the model domain. Altogether, over twenty reports (in some instances externally reviewed as well as internally reviewed) and independently peer reviewed scientific papers have been published that cover all the updates to the modeling system that is now the intermediate scale model SSM that Ecology applies.

Following standard practices and methods, Ecology has traditionally used mechanistic models for TMDL development linking point and non-point nutrient sources to both DO and *pH* impacts in receiving waters. Model results form the basis of *wasteload allocations* and *load allocations* for point and non-point sources in the TMDL which, in turn, inform water quality based effluent limits for point sources. The SSM is a typical regulatory model in that sense and has gone through several development steps since starting out as the PSM. What sets the SSM apart from the other regulatory models used by Ecology is the large scale and complexity of the waterbody lending its name to the tool. Models this size are not typical; however, according to EPA, they have been used in regulatory decision making for other large, complex bodies of water with DO impairments like the Chesapeake Bay. As described above, multiple SSM-related publications have documented the complexities, refinements, predictive skill and assumptions of the SSM and its improvements since its early days as the PSM.

EPA also addressed model uncertainties and acceptance in detail during the presentation to the PSNF (Cope, 2021). All water quality models have inherent levels of uncertainty. While the goal is to strive for a model's output to match observations there will always be some amount of model error. Matching patterns of freshwater input volume, vertical mixing and interbasin mixing is one way to understand the scale of the model error when comparing results to observations. It is important to note that no numeric state or federal guidelines exist for "acceptable" model error. EPA does have general guidelines for what constitutes a quality model for decision making in their *Guidance on the Development, Evaluation, and Application of Environmental Models* (CREM, 2009). Ultimately, the regulatory agency has the authority to determine what constitutes the best available science for decision making purposes. Ecology has determined that the SSM constitutes the best available science for determining the suite of point and non-point source reductions necessary to meet numeric water quality standards for DO. External opportunities to comment on and review the application of the SSM and the overall Puget Sound Nutrient Source Reduction Project occur in a separate process from the development of the draft PSNGP.

### **Documenting Reasonable Potential**

Ecology documented review of the calibration, sensitivity analyses, and precision of the SSM in the [Puget Sound Nutrient Source Reduction Project Volume 1: Model Updates and Bounding Scenarios](#) ("Bounding Scenarios"), a report developed by the Environmental Assessment

Program. The goals of the modeling project were 1) to run the SSM with enhancements and updates while checking the calibration of the model and 2) use the calibrated model to run and evaluate the bounding scenarios to inform the overall nutrient reduction strategy for Washington waters of the Salish Sea (Ahmed et al., 2019). At a high level, the Bounding Scenarios report evaluated the regional impacts of cumulative human nutrient sources on DO concentrations both over time and space/area for the 2006, 2008, and 2014 model years, as well as the model predicted changes due to improved treatment at domestic WWTPs.

The results from the Bounding Scenarios report led Ecology to make the *reasonable potential* determination for domestic WWTPs discharging directly to the Washington waters of the Salish Sea. Specifically, the following key findings from the Bounding Scenarios report led Ecology to make this determination:

1. The estimated breakdown of the land-based inflows for dissolved inorganic nitrogen (DIN), on an annual basis, is the following: marine domestic point sources (WWTPs) contribute around 30,540 kg/day compared to rivers which contribute around 25,240 kg/day. WWTPs are the dominant land-based dissolved inorganic nitrogen (DIN) source during the low flow (summer) months.
2. Consistent with the findings from Mohamedali, et.al (2011), WWTPs contribute a much larger proportion (92%) of the anthropogenic DIN loads to Washington waters of the Salish Sea during the low flow season.
3. In addition to localized impacts from direct discharges, excess nutrients discharged from these domestic WWTPs in one location cumulatively contribute to DO impairments in other locations due to the water exchange that occurs between basins.

When a permitting authority makes the determination that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric water quality standards for an individual pollutant, the permit must contain an effluent limit for that parameter (40 CFR § 122.44(d)(1)(iii)). Ecology determined for the first permit control of total inorganic nitrogen is an appropriate first step to address nutrient pollution from domestic WWTPs as inorganic nitrogen (the sum of nitrate-nitrite and ammonia) is the form of nitrogen more available for algal growth driving eutrophication and the existing DO impairments. For purposes of this permit, Ecology will use TIN as a conservative measure of DIN as the SSM did not use a ratio, or other method, to calculate an assumed dissolved component from existing TIN discharge monitoring report (DMR) data. Future permit cycles may include effluent limitations for other nutrient parameters (e.g., carbon) when modeling results show that additional reductions are necessary to meet DO standards in the receiving water.

Modeling work continues with the SSM in order to determine the scale of reductions necessary to meet numeric water quality standards for DO. As of Spring 2021, Year 1 Optimization scenarios are still being analyzed. In addition to the need to offset nutrient loads from population growth mentioned previously in this fact sheet, early results indicate greater need for water quality improvement from annual point source load reductions and also confirm the

need for watershed reductions to attain standards. Ecology will review these results internally prior to sharing results at the PSNF. When the analysis is complete, Year 1 results will help to scope further refinements for the Year 2 optimization scenarios with the PSNF.

Ecology plans to use the Year 2 optimization scenarios to evaluate targets for individual basin load reductions, watershed inflow load reductions and point source wasteload allocations for different basins. These Year 2 scenarios will constitute the basis from which numeric WQBELs will be developed. Ecology will combine both the Year 1 and 2 optimization results into a Volume 2 SSM Report which will go through an external review process. Following that review, Ecology will use the draft Puget Sound Nutrient Reduction Plan (NRP) to assign the applicable allocations, possibly at the basin level. See the Puget Sound Nutrient Reduction Project webpage (<https://ecology.wa.gov/Water-Shorelines/Puget-Sound/Helping-Puget-Sound/Reducing-Puget-Sound-nutrients/Puget-Sound-Nutrient-Reduction-Project>) for more information and an opportunity to receive updates on the project.

#### *Puget Sound Nutrient Reduction Plan*

The 2014 Water Quality Assessment found 136 impaired area 303(d) listings for DO in the Salish Sea and 331 Category 2 listings indicating waters of concern. With at least 10 years dedicated to the technical work and development of water quality models, Ecology has reached the point where the science clearly demonstrates that cumulative point and nonpoint sources deplete DO resulting in nonattainment of standards within Washington waters of the Salish Sea. In a traditional approach, Ecology would develop a formal Total Maximum Daily Load (TMDL) to address the impairments. Instead, Ecology elected to develop the Puget Sound Nutrient Reduction Plan (NRP) to comprehensively address reduction for all human nutrient sources to our valuable receiving water. The benefits of this alternative restoration plan approach include achieving cleaner water more quickly than a traditional TMDL and improved opportunities for stakeholder input throughout the document development.

Participants in the PSNF provided feedback in 2020 on a draft outline of high-level elements that Ecology intends to include in the NRP. Ecology will use the NRP to explain why nutrient reduction is vital to improving water quality and protecting the designated uses detailed in Chapter 173-201A-210 and this fact sheet. In addition to documenting Puget Sound's nitrogen loading capacity and both the point source and watershed inflow nutrient reduction targets, the publication will detail the strategy for addressing watershed point and nonpoint sources to meet watershed nutrient reduction targets. It will also describe the effectiveness monitoring and adaptive management approaches that Ecology will use to iteratively meet these reduction targets and develop a watershed nutrient reduction strategy. The rationale for all regulatory decisions contained in the NRP must also be included.

Ecology will consult the PSNF for feedback and input on parts of the NRP, especially as it pertains to the watershed reduction strategy. Once drafted, the NRP will also go through an extensive public review and comment period. Ecology will also invite Tribal consultation. Visit the Puget Sound Nutrient Reduction Project's Webpage ( <https://ecology.wa.gov/Water-Shorelines/Puget-Sound/Helping-Puget-Sound/Reducing-Puget-Sound-nutrients/Puget-Sound->

Nutrient-Reduction-Project) for the most up to date information on this plan and other collaborative efforts.

## **AUTHORITY TO INCLUDE NON-NUMERIC WATER QUALITY-BASED LIMITS**

Under EPA's regulations, non-numeric effluent limits are authorized in lieu of numeric limits, where "[n]umeric effluent limitations are infeasible." 40 CFR 122.44(k)(3). As far back as 1977, courts have recognized that there are circumstances when numeric effluent limitations are infeasible and have held that EPA may issue permits with conditions (e.g., Best Management Practices or "BMPs") designed to reduce the level of effluent discharges to acceptable levels. *Natural Res. Def. Council, Inc. v. Costle*, 568 F.2d 1369 (D.C.Cir.1977).

Through the Agency's NPDES permit regulations, EPA interpreted the CWA to allow BMPs to take the place of numeric effluent limitations under certain circumstances. 40 C.F.R. §122.44(k), entitled "Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs ...)," provides that permits may include BMPs to control or abate the discharge of pollutants when: (1) "[a]uthorized under section 402(p) of the CWA for the control of stormwater discharges"; or (2) "[n]umeric effluent limitations are infeasible." 40 C.F.R. § 122.44(k).

More recently, the U.S. Court of Appeals for the Sixth Circuit also held that the CWA does not require the EPA to set numeric limits where such limits are infeasible. *Citizens Coal Council v. United States Environmental Protection Agency*, 447 F3d 879, 895-96 (6th Cir. 2006). The *Citizens Coal* court cited to *Waterkeeper Alliance, Inc. v. EPA*, 399 F.3d 486, 502 (2d Cir. 2005), stating "site-specific BMPs are effluent limitations under the CWA." "In sum, the EPA's inclusion of numeric and non-numeric limitations in the guideline for the coal remining subcategory was a reasonable exercise of its authority under the CWA."

Additionally, the Sixth Circuit cited to *Natural Res. Def. Council, Inc. v. EPA*, 673 F.2d 400, 403 (D.C.Cir.1982) noting that "section 502(11) [of the CWA] defines 'effluent limitation' as 'any restriction' on the amounts of pollutants discharged, not just a numerical restriction."

EPA has substantial discretion to impose non-quantitative permit requirements pursuant to Section 402(a)(1)), especially when the use of numeric limits is infeasible. See *NRDC v. EPA*, 822 F.2d 104, 122-24 (D.C. Cir. 1987) and 40 CFR 122.44(k)(3).

## **RATIONALE FOR NON-NUMERIC WATER QUALITY-BASED EFFLUENT LIMITS**

As discussed in this fact sheet Ecology's application of the Salish Sea Model (SSM) has shown that nutrients, particularly inorganic nitrogen, discharged from domestic wastewater treatment plants contribute to low dissolved oxygen concentrations in Puget Sound that do not meet state water quality criteria. As previously stated, the "Bounding Scenarios" report confirmed that circulation within the inner basins of Puget Sound distributes pollutant throughout the waters in the Puget Sound region. The circulation patterns showed how discharges in one basin can



affect the water quality in other basins. Thus, all wastewater discharges to the greater Puget Sound area containing nitrogen cumulatively contribute to existing DO impairments meeting the threshold for reasonable potential under 40 C.F.R. 122.44(d)(1)(iii).

When Ecology establishes reasonable potential for a discharge or group of discharges to violate surface water quality standards, the agency must implement a water quality based effluent limit (WQBEL) for that pollutant. While Ecology has enough information to determine reasonable potential exists, additional modeling work is still necessary to establish numeric WQBELs. Traditional effluent limit calculation tools for point sources are not appropriate in this instance for two reasons. First, these tools are based on limiting toxic pollutants that typically have more acute toxicity than nutrients and criteria with 1-day and 4-day averaging periods (durations). Comparatively, nutrients have much longer averaging periods on the order of weeks to months or longer (EPA, 2004). Second, Washington State uses numeric criteria for DO. The cause of depressed DO requires modeling to determine levels of nutrients that will not cause a violation of the DO criteria as allowed in 40 C.F.R. 122.44(d)(vi)(c). In a receiving water as complex as Puget Sound, the modeling work necessary to develop numeric WQBELs for each discharge is comprehensive and requires extensive internal and external review.

In accordance with 40 C.F.R. 122.44(k)(3), **best management practices (BMPs)** are appropriate to control or abate the discharge of pollutants when numeric effluent limits are infeasible. This permit through its requirements for **optimization** of current treatment processes to abate nutrient loads through the permit term, the use of an **action level** and treatment performance metrics serve as an indicator for optimization success, the requirement for dominant loaders to pursue additional nutrient reduction actions if the action level is exceeded, and early planning constitute a suite of BMPs that meet the intent of the federal regulation for this first permit cycle.

Ecology continues to review model results from the first year of optimization scenarios and scope future model runs through the Puget Sound Nutrient Forum. Additional model runs will be defined in 2021 to further quantify far and near field effects of wastewater discharges to marine waters along with the anthropogenic nutrient loads from Puget Sound watershed. Once Ecology can establish a nutrient loading capacity that meets DO criteria in the marine waters of Puget Sound, allocations that will lead to numeric WQBELs can be established. The NRP will include draft allocations for point sources and watershed inflows. After internal and external review, the allocations will be finalized and numeric WQBELs will no longer be infeasible. It is anticipated that for the second iteration of this permit the approach will shift to working towards compliance with those numeric limits.

#### CONSIDERATION OF NARRATIVE SURFACE WATER QUALITY-BASED LIMITS FOR NUMERIC CRITERIA

As previously stated, 40 CFR §122.44 requires the permit to contain effluent limits to control all pollutants or pollutant parameters which are, or may be, discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard.

Ecology documented reasonable potential with the determination that domestic wastewater discharges may cause or contribute to a violation of surface water quality standards for dissolved oxygen. Therefore, the draft permit includes BMP based, narrative water quality-based effluent limits to control discharges as necessary to meet applicable water quality standards for DO as allowed under 40 CFR § 122.44(k).

Ecology proposes two sets of narrative limits for two categories of dischargers. Proposed narrative limits for all plants require Permittees to actively reduce their contribution as much as possible during the permit term. However, the group of Permittees that constitute the dominant TIN load into Puget Sound must do more than the Permittees with the smallest TIN loads. Ecology determined that the dominant loads from eligible Permittees constitute approximately 99% of the total domestic point source load discharged to Puget Sound. TIN loads exceeding 100 lbs/day qualify as dominant loads.

All Permittees must monitor their influent and effluent, optimize existing treatment and begin planning for the future. Dominant loaders also have a facility specific action level that represents the current discharge condition and drives corrective actions when the level is exceeded for two consecutive years or three times during the permit term. If the dominant loader triggers the corrective action, they must reduce their effluent load by 10%. If a jurisdiction with a bubbled action level triggers a corrective action, the 10% reduction applies to the bubbled total. Unless the corrective action selected by the Permittee includes a design previously approved by Ecology, qualifying Permittees must submit an abbreviated engineering report or a technical memo signed and stamped by a professional engineer detailing the proposed solution with the Annual Report submittal following the initial action level exceedance.

Ecology proposes to implement a less aggressive approach for the Permittees with the smallest TIN loads given that they collectively represent approximately 1% of the domestic point source anthropogenic load. Ecology calculated average daily TIN loads for Permittees using 2019 DMR data to determine the categorization. This approach differs from what Ecology proposed in the Preliminary Draft. The Preliminary Draft included a more universal approach for all Permittees with no consideration of requirements based on TIN load magnitudes. While the smallest loaders must still work to reduce their effluent TIN loads, the proposed requirements in the draft permit now better reflect their minimal contribution to the existing impairments.

This proposed general permit supplements the individual NPDES permits held by the dischargers proposed for coverage. The individual NPDES permits supply the technology-based and water quality-based effluent limits as well as requirements for controlling other pollutants in the facility's discharge. Ecology anticipates that implementing the optimization requirements in the draft permit and the application of adaptive management through the BMP approach will result in wastewater discharges that minimize cumulative contributions to violations of the state's Surface Water Quality Standards (Chapter 173-201A WAC) during the permit term. Numeric limits remain infeasible because modeling is not yet complete. Therefore, the draft permit includes narrative water quality-based effluent limits (WQBELs) to control discharges as

necessary to meet applicable water quality standards for DO. The provisions of S3 Compliance with Standards, provisions of S4 and S5 Requirements for Permittees (Dominant and Small), S6 Monitoring Schedules and Sampling Requirements, and S7 Discharges to 303(d) or TMDL Water Bodies constitute the narrative WQBELs in the draft permit.

#### *Condition S3. Compliance with Standards*

Condition S3 prohibits discharges that cause or contribute to violations of Surface Water Quality Standards (Chapter 173-201A WAC), Sediment Management Standards (Chapter 173-204 WAC), and human health-based criteria in the Federal water quality criteria applicable to Washington (40 CFR §135.45).

Each Permittee must control its discharge as necessary to meet applicable water quality standards. Ecology considers compliance with the narrative conditions in the draft permit (e.g., action levels, optimization, planning, monitoring, and any necessary corrective actions) as adequate control necessary for dischargers to meet applicable water quality standards during the permit term.

The Permittee must take corrective action if they become aware, or if Ecology issues a determination through a notice of non-compliance, that the discharge causes or contributes to a water quality standards exceedance. In addition, Ecology may require additional monitoring at any time during the permit term if information suggests that the discharge lacks the controls necessary to meet applicable water quality standards.

#### *Condition S4. Requirements for WWTPs with Dominant TIN Loads*

Authorized Discharges – Discharges conditionally authorized by the permit include wastewater discharges from POTWs constituting greater than 99% of the current domestic point source anthropogenic TIN load to Washington Waters of the Salish Sea.

Domestic Wastewater Discharges constituting the largest TIN loads – The narrative water quality-based limits for domestic wastewater discharges includes a suite of BMPs required over the duration of the permit term. These BMPs include:

- monthly monitoring requirements;
- a numeric action level for total inorganic nitrogen (lbs/year) that require implementation of treatment optimization to stay under the action level;
- an annual Nitrogen Optimization Plan; and,
- early planning through the Nutrient Reduction Evaluation that includes an AKART analysis and evaluating alternatives to meeting 3 mg/L TIN (or the equivalent load) both annually and seasonally.

The suite of BMPs that constitute narrative WQBELs are unique to this permit term. They require the permittee to document and assess the adaptive management procedures used to



reduce nutrients in their effluent. The TIN action level is used in the draft general permit as this is the primary pollutant of concern as identified through investigations into existing DO impairments in the greater Puget Sound area. All domestic wastewater discharges contain inorganic nitrogen with human urine being the primary source.

#### *Condition S5. Requirements for WWTPs with Small TIN Loads*

Authorized Discharges – Discharges conditionally authorized by the permit include wastewater discharges from POTWs constituting less than 1% of the current domestic point source anthropogenic TIN load to Washington Waters of the Salish Sea.

Domestic Wastewater Discharges with the Smallest TIN loads– The narrative water quality-based limits for domestic wastewater discharges includes a suite of BMPs required over the duration of the permit term. These BMPs include:

- monthly monitoring requirements;
- treatment optimization requiring submittal of an optimization report; and,
- an AKART analysis specific to nitrogen removal.

The suite of BMPs that constitute narrative WQBELs are unique to this category of discharger during the permit term. They require the permittee to document, quantify, and analyze the adaptive management procedures used to reduce nutrients in their effluent.

#### *Condition S6 Monitoring Schedules and Sampling Requirements*

Ecology has included monitoring requirements as part of the narrative water quality based effluent limits for Permittees listed in Conditions S4 and S5. Required influent and effluent monitoring will inform the adaptive management component of the draft permit and support the optimization requirements for all Permittees.

#### *Condition S7 Discharges to 303(d) or TMDL Water Bodies*

Ecology cannot allow a new discharge to a listed waterbody (issuance of permit is prohibited) if the discharge will cause or contribute to a violation of water quality standards. Ecology may allow a new discharge if it meets the applicable water quality criteria. The applicable federal regulation is 122.4(i) Sec. 122.4 Prohibitions. *No permit may be issued: i) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards.*

The draft PSNGP establishes narrative water quality-based numeric effluent limits for domestic WWTPs as identified in S4 and S5. These limits will also apply to any discharges to certain waters that are listed as impaired under Section 303(d) of the Clean Water Act. Numeric effluent limits will replace these narrative effluent limits after establishing a facility specific compliance period once Ecology completes the alternative restoration plan (e.g., Nutrient Reduction Plan) or EPA approves a TMDL.

All references and permit requirements associated with Section 303(d) of the Clean Water Act pertain to the most current EPA-approved 303(d) listing of impaired waters that exists when a complete application for coverage is submitted to Ecology. Ecology has determined that domestic WWTPs have the potential to cause or contribute to violations of water quality standards in waterbodies that are 303(d) listed for DO, and must comply with the narrative effluent limit(s) in S4 and S5 of the permit.

## **SEDIMENT QUALITY**

Ecology has promulgated Sediment Management Standards (Chapter 173-204 WAC) to protect aquatic biota and human health. These standards state that Ecology may require Permittees to evaluate the potential for the discharge to cause a violation of applicable standards (WAC 173-204-400). The permit requires adaptive management to limit discharge of total inorganic nitrogen. This general permit contains no requirements for protecting sediment quality. Impacts to sediments are assessed during the development of the individual permits currently held by all POTWs proposed for coverage under this general permit. Specific facility requirements for meeting sediment management standards can be found in the POTW's individual NPDES permit.

## **GROUND WATER QUALITY LIMITATIONS**

Ecology has promulgated Ground Water Quality Standards (Chapter 173-200 WAC) to protect beneficial uses of ground water. Permits issued by Ecology prohibit violations of those standards (WAC 173-200-100). This permit does not authorize any discharges to groundwater.

## **ANTI-BACKSLIDING**

NPDES permits may not be reissued, renewed, or modified with less stringent limitations or conditions than those defined in a previous permits unless the changes comply with anti-backsliding requirements in 40 CFR 122.44(l)(1-2). Technology based effluent limits, water quality based effluent limits, and applications of best professional judgement are subject to anti-backsliding provisions.

## **DESCRIPTION OF SPECIAL CONDITIONS**

This section follows the structure of the draft Puget Sound Nutrient General Permit (PSNGP), but does not restate language used in the permit. The information presented below is intended to help the public understand the intent and basis of the draft permit.

## **S1. PERMIT COVERAGE**

A. Coverage Area and Eligible Discharges. The PSNGP is a regional permit. It provides permit coverage for discharges of domestic wastewater from publicly owned treatment works (POTWs) known to contain inorganic nitrogen within Washington’s waters of the Salish Sea, excluding federal land, tribal land and certain tribal waters.

A definition of “Permittee” is not provided in chapter 90.48 RCW, 173-220, or 173-226 WAC, nor is one provided in 40 CFR 122 (EPA NPDES Permit Program) or State NPDES Permit Programs. Based upon the usage of Permittee in federal and Washington State law, Ecology takes the term “Permittee” to mean the person or entity that discharges or controls the discharge of pollutants to waters of the state and holds permit coverage allowing that specific discharge. For the Puget Sound Nutrient General Permit, Ecology is clarifying that the permit may be held by Washington State municipalities who currently hold an individual NPDES permit and are represented as a discrete, domestic point source in the Salish Sea Model (SSM).

This PSNGP identifies the municipal POTWs that must seek permit coverage. “POTW” is defined as a sewage treatment plant that is owned and usually operated by a local government agency designed to treat domestic sewage.

This PSNGP addresses discharges from POTWs into Puget Sound’s marine and estuarine waters that are known to contain inorganic nitrogen. Permittees are divided into two categories. While the type of discharge is the same amongst the domestic dischargers, the current TIN loads vary widely. This permit mandates more stringent requirements for the dominant loaders (those constituting 99% of the current domestic point source TIN load) due to their contribution to the existing nitrogen over enrichment. Smaller plants, those that discharge less than 1% of the TIN load must also work towards reducing nitrogen in their discharge; however, requirements for these facilities take into account the scale of their contribution. Categories for domestic WWTPs that must apply for coverage under the draft permit are identified using (D) and (S) for dominant and small TIN loads in draft permit section S1.A, Table 3. Ecology determined these categories by ranking cumulative average daily TIN loads for each of the 58 WWTPs using 2019 DMR data. See [Appendix D](#) in this fact sheet for the cumulative ranking results.

B. Limits on Coverage. This section identifies the types of discharges that are not authorized by the permit. These include discharges from:

1. WWTPs that are federally owned or operated, or located on tribal land, or discharge to tribal waters with EPA approved water quality standards.
2. Privately owned WWTPs currently permitted by Ecology with an individual NPDES permit.
3. POTWs located in tributary watersheds feeding Puget Sound

#### 4. Industrial WWTPs discharging to Puget Sound.

Ecology does not have authority to write NPDES permits for federal and tribal facilities. EPA is the responsible permitting authority for these plants in Washington State. Conditions for nutrient controls will be implemented for these facilities through the 401 Water Quality Certification process.

In 2000, Ecology modified the Washington Administrative Code that provides terms and conditions for NPDES permits, Chapter 173-220-150(4). This rule change requires permits for domestic wastewater facilities be issued only to public entities after the modification date. Private facilities excluded from coverage under the PSNGP all have individual NPDES permits issued prior to the rule change. These plants must incorporate into a public entity such as a sewer district in the event of a treatment process change or expansion. Because Ecology does not issue new NPDES permits to private entities any longer, these private plants are excluded from coverage under the PSNGP. Nutrient controls will be implemented at the time of individual permit reissuance for these private treatment plants. Ecology has developed a permit issuance schedule for these plants prioritizing those that discharge to more sensitive ecoregions of Puget Sound.

Twenty-six (26) POTWs discharge to rivers that feed into Puget Sound at locations currently outside of the SSM grid. Ecology accounts for the nutrients from these plants as part of the aggregated watershed loads in the model. Determining the impact of these discharges on Puget Sound dissolved oxygen requires additional modeling tools. Ecology plans to develop these additional watershed modeling tools during the first PSNGP five year term. Coverage may expand to include these facilities during the second permit term. Some of these POTWs have wasteload allocations for nutrients based on DO TMDLs in their respective watersheds. Any future general permit coverage would take into account these EPA approved wasteload allocations.

Ecology must limit coverage general permit to a similar category of discharges. Industrial treatment plant discharges have a different characterization than domestic sewage. They primarily discharge carbon, not nitrogen. Ecology plans to implement nutrient controls for industrial treatment plants through the individual permitting process.

Ecology has not included a termination condition in the draft permit because each Permittee currently has an active individual NPDES permit. Termination of coverage under the draft general permit can only occur if the Permittee removes all discharges from Washington waters of the Salish Sea by redirecting treated effluent to ground (as authorized under a State Waste Discharge Permit) or any other means subject to Ecology's approval.

## **S2. APPLICATION FOR COVERAGE**

A. Obtaining Permit Coverage. In accordance with WAC 173-226-200, each eligible POTW must submit a complete permit application to obtain coverage under the Puget Sound Nutrient



General Permit. Applicants must submit the Notice of Intent (NOI) no later than 90 days after the issuance date of the general permit.

B. How to Apply for Permit Coverage. Each Permittee must submit an electronic NOI through the Water Quality Permitting Portal unless the Permittee has an electronic reporting waiver.

Applicants must satisfy the public notice requirements of WAC 173-226-130(5). This permit applies to existing facilities, only. Therefore, no public notice is required for coverage under this permit.

C. When Permit Coverage is Effective. Ecology will respond to the permit applicant in writing. If the NOI is incomplete or more information is needed Ecology will notify the applicant in writing and identify the issues that must be resolved before a decision on permit coverage can be reached.

If Ecology approves the application, permit coverage in an **active status** under the general permit will begin on the date specified in the permit coverage letter.

D. Modification of Permit Coverage. If the Permittee requests a modification in coverage a completed Modification of Coverage form must be submitted to Ecology at least 60 days prior to the needed modification. Examples of when a Permittee needs a coverage modification include any adjustments to an action level or a reduction in monitoring. Changes to treatment processes resulting from optimization do not require a modification of permit coverage. Treatment alterations resulting from a corrective action or facility upgrade may require coverage modification if treatment processes are substantially altered. Ecology will evaluate coverage modifications for these situations on a case-by-case basis. Public notice requirements under WAC 173-226-130(5) must be completed as part of this modification request. SEPA may be required if the modification requested is related to a major process upgrade.

### **S3. COMPLIANCE WITH STANDARDS**

Condition S3 of the permit is covered in this fact sheet under Consideration of Surface Water Quality-Based Limits for Numeric Criteria, above.

### **S4. REQUIREMENTS FOR WWTPS WITH DOMINANT TIN LOADS**

The discharge limits in S4 are described above in *Rationale for Narrative Water Quality-Based Effluent Limitations* and *Consideration of Narrative Water Quality-Based Limits for Numeric Criteria*.

#### **ACTION LEVEL CALCULATION**

This draft permit proposes a total inorganic nitrogen action level for each of the permittees listed in Condition S4, which constitute 99% of the current domestic point source anthropogenic load. The action level, AL<sub>0</sub>, forms the baseline value representing current TIN

loading and drives treatment optimization requirements. Ecology developed a calculation tool for  $AL_0$  that uses a non-parametric method called “bootstrapping” to calculate the annual load from facility data that represents a load that would only have a 1% chance of exceeding if the loads are consistent with existing loading. Bootstrapping is a statistical test that uses random sampling with replacement meant to mimic the sampling process (“Bootstrapping(statistics),” 2021). As opposed to parametric methods that make assumptions about an underlying distribution of a data set to determine future observations, the bootstrapping method assumes the original data set represents possible future observations in the absence of changing conditions.

Confidence intervals for simulated means using the bootstrapping method can be derived by first randomly selecting values from the original observation data (with each selected value being returned to the original set for potential reselection) in order to create a new “bootstrapped” sample of observations. The mean of each resampled data set is then determined and those means create a probability distribution. Ecology calculated  $AL_0$  using the 99% upper confidence level (UCL) from the probability distribution of means. Members of the Environmental Caucus expressed a desire for Ecology to use the 95% UCL from the same probability distribution of means for the  $AL_0$  calculation. However, use of the 95% UCL actually results in a 23% chance of at least one exceedance over the permit term. The 99% UCL more accurately represents the discharge condition at each of the qualifying facilities and is sufficient to drive meaningful nutrient reduction progress during the permit term. While Ecology is confident that this 99% UCL bootstrapping calculation represents a 1% chance of exceedance for a given year, it does not take into account inter-annual variability related to cool and wet weather. For this reason, permittees must exceed the action level two consecutive years before triggering the corrective action requirement discussed below. Permittees with a “bubbled” action level will trigger the corrective action requirement when the cumulative annual loads for all applicable plants exceeds the value in draft Condition S4.A. Bubbled action levels sum the individual action levels for each WWTP owned and operated by the same *jurisdiction*. Ecology will evaluate the combined, reported annual TIN loads for each WWTP included in the bubbled action level at the end of each 12 month monitoring period. If the loading from the applicable WWTPs exceeds the bubbled action level, the corrective action requirement applies.

Ecology strived to accurately represent existing discharges with the action level calculation. Where possible Ecology used at least 3 years of data (36 data points) in the  $AL_0$  calculation. More data was used if it was available and representative. TIN loads were calculated using day of flow measurements paired with single sample ammonia and nitrate/nitrite concentrations. Where ammonia and nitrate/nitrite were not measured on the same day, the missing concentration was extrapolated from the most representative measurement. Periodic samples are assumed to represent the month or quarter in which a sample was taken. If there are multiple samples in a period, new data replaces old as best representation for subsequent days in the period. Most Permittees had monthly data available for these individual load calculations. Some Permittees had only quarterly data which required extrapolation to better represent the variability. The representative concentration was paired with the first flow

measurement in the months not sampled to estimate load variation over the course of the quarter.

Ecology verified whether enough data for each facility exists to make a reasonable representation of the unmeasured data by using the shape of the cumulative distribution functions (CDF) as a check. The CDF plot for bootstrapped averages appears as a smooth line if the observations cover the full range of possible results. Bumpy curves or steep slopes in the CDF indicate an insufficient amount of data or data that does not accurately represent the discharge condition. All facilities listed in S4 had a sufficient amount of DMR data for the action level calculation except for Blaine's Lighthouse Point WRF. This facility specific action level is based on a shorter period than other facilities due to COVID related closures which impacted the availability of representative data. See [Appendix E](#) for calculation information related to the data range used for each S4 permittee's AL<sub>o</sub>.

This action level calculation serves as Ecology's best representation of each Permittee's existing discharge condition given the DMR data available. Sampling requirements in Condition S6 will increase the sampling density for all Permittees. In some cases, this increased sampling density may result in a better effluent characterization which could impact the estimate of existing loads. Permittees may request an action level reassessment after completing one year of sampling. In order for Ecology to accept this request to reassess the action level, Permittees must show that the overall loading to the facility has not increased by providing an influent BOD<sub>5</sub> load comparison. Ecology cannot reassess the action level if influent loads increased during the first year of the draft general permit. Any recalculated action levels would be implemented through a permit coverage modification (see draft Condition S2.D for more details about the coverage modification).

#### DRAFT CONDITION S4.C NITROGEN OPTIMIZATION PLAN

The draft permit requires optimization of existing treatment processes as a best management practice (BMP) to stay below the facility specific nutrient action level and to reduce nitrogen to the greatest extent possible during the permit term. Optimization, as required by this permit, is the suite of activities or a single activity that result in improved nitrogen removal at an existing treatment plant, regardless of the treatment type. It does not include activities that result in costly upgrades or large capital infrastructure improvements. Optimization serves as the mechanism to bridge the period between this first permit issuance and compliance with final, numeric WQBELs, which Ecology will calculate after completing the modeling to support the NRP.

For the largest loaders, submittal of the annual Nitrogen Optimization Plan (NOP) via the Annual Report requirement constitutes a portion of the narrative WQBEL for this 5 year permit term as it represents an adaptively managed BMP. All Permittees specified in Special Condition S4 must develop, implement, and maintain a NOP for purposes of maximizing removal of nitrogen. The NOP must be submitted to Ecology via the Annual Report requirement.

Permittees must begin to identify optimization strategies starting upon the effective date of the PSNGP, following receipt of the coverage letter from Ecology with implementation occurring as soon as possible during permit year 1. In the Annual Report, Permittees must document optimization opportunities at their WWTP, implementation process, the success of the implemented strategy compared to expected performance, any necessary refinements to improve performance, and the application of adaptive management. Permittees must use monitoring data collected under this permit in addition to process modeling to quantify and evaluate results. A number of different optimization strategies exist and Ecology understands implementation opportunities will vary across all POTWs that must seek coverage under the propose permit. Ecology expects that the year round quantifiable BMP requirement to optimize treatment will assist Permittees listed in S4 in keeping annual TIN effluent loads as low as possible.

### *Optimization Approaches*

The preliminary draft permit released by Ecology in January 2021 contained different tiers of actions for optimizing biological treatment to remove nitrogen. This permit does not differentiate between the tiers of optimization requirements leaving the Permittee to determine what strategies are best suited for reducing nitrogen with the existing treatment process. The following categories of optimization strategies are meant to help be a guide for Permittees to improve biological nitrogen removal but in no way are they exhaustive. Permittees can implement optimization strategies not listed in this fact sheet provided they document the selection process in the Annual Report. As previously stated, optimization should not result in major capital improvements at each Permittee's WWTP (although, some implementation costs are expected).

Permittees may exclude optimization strategies that exceed a reasonable implementation cost or timeframe. Any impacts resulting in exclusion must be documented in the Annual Report per condition S4.C.1.b. Ecology attempted to collect feedback on what Permittees would evaluate when making decisions about applicable optimization approaches and their financial impact during the preliminary draft stage. No clear response emerged from the comments received on that permit draft. If excluding a viable optimization strategy due to financial reasons, Permittees must provide the anticipated implementation cost and describe the justification for why they cannot cover and/or absorb that cost. Justifications may include immediate impacts to operational, equipment or capital budgets and an explanation of why the jurisdiction cannot make accommodations to cover these costs through future budgeting adjustments. When excluding a strategy due to the implementation timeframe, include documentation that how long procurement and installation will take to occur and any other pertinent information.

EPA's *Case Studies on Implementing Low-Cost Modifications to Improve Nutrient Reduction at Wastewater Treatment Plants* (2015) is a resource recommended for optimizing activated sludge plants. The following optimization strategies reflect the document's suggestions for

improving nitrogen removal at WWTPs. Plants that do not use an activated sludge process are encouraged to focus more on influent load reductions and effluent management alternatives.

#### *Process Control Modifications*

Process control optimization strategies include the various operational approaches used to control the treatment process and respond to changing operational conditions. Many different factors can affect process performance. Permittees shall consider modifications to the solids retention time, mixed liquor suspended solids concentrations and F/M ratios. Improved flow equalization, changes to internal recycle rates, side stream return flow controls, online analyzers (e.g., oxidation reduction potential, DO, etc.), improved process control monitoring, primary sludge fermentation, and sequencing batch reactor cycle modifications are all examples of process control optimization actions. Septage receiving and handling modifications can also be implemented to help regulate influent loads at the WWTP. Many of these process control changes can be made using existing infrastructure helping to keep implementation costs low.

#### *Aeration Modifications*

Removing nitrogen biologically requires maintaining specific biological populations that have variable needs for oxic (nitrification) and anoxic (denitrification) conditions. Modification of aeration controls through diffuser improvement, DO probe settings, blower motor variable frequency drive settings, and improved air valve actuation settings are examples of optimization through aeration modifications. Mixer modifications to prevent entraining oxygen in an anoxic zone are another example of this optimization strategy.

#### *Configuration Changes*

Altering the way wastewater flows through the treatment plant is a physical way to alter a process configuration, which has the potential to reduce nitrogen. These can include adding baffles for creation of anoxic zones, step feeding influent to encourage consistent F/M ratios, additional recycle piping, use of gates or channel changes, or plug flow conversions to create aerobic and anoxic zones. These can be similar to process control modifications; however, configuration changes can be costly and generally require investment in some new infrastructure or equipment. Therefore, Ecology recommends investigation of configuration changes only if the POTW can implement the optimization strategy with existing infrastructure and minimal procurement of equipment.

#### *Chemical Addition*

Chemical addition may be necessary to help drive biological nitrification and denitrification. Alkalinity and carbon are the two parameters that can improve a treatment plant's ability to remove nitrogen. Alkalinity feeds can help improve nitrification if background alkalinity concentrations are low and unable to maintain the pH range necessary for biological nitrification. Supplemental carbon may be necessary to drive denitrification if there is an

insufficient carbon source from influent soluble BOD. Chemical feed systems to regulate delivery of supplemental alkalinity or carbon will require an investment from the Permittee as will the purchase of the chemicals themselves. Ecology recommends chemical addition as an optimization strategy only after working to improve other treatment process performance through control and configuration strategies. This strategy is also most applicable to POTWs originally designed for nitrification/denitrification where operators cannot achieve adequate treatment efficiency.

### *Effluent Management*

Changes in effluent management to reduce nitrogen loads to the water environment can occur several different ways. Primarily, this approach redirects effluent from reaching surface water through increasing the volume of reclaimed water produced (if previously permitted for reclaimed water production), discharge to a polishing wetland, or other alternate disposal methods where the effluent can be discharged to ground. Groundwater Quality Standards in Chapter 173-216 WAC include criteria for total nitrogen (TN) at 10 mg/L. Most Permittees subject to draft permit condition S4 discharge well above 10 mg/L TN. This criteria may preclude use of discharge to ground as an optimization strategy; however, it shall be considered as part of the Nutrient Reduction Evaluation. Ecology recommends effluent management strategies apply to Permittees that already produce reclaimed water or have approved alternate disposal methods due to the complexity and implementation costs that accompany this approach.

### *Nitrogen Optimization Report Requirements*

Ecology understands that there may be many different approaches to optimization and does not want Permittees to focus reporting on daily process microadjustments. Rather, the Annual Report documenting optimization must focus on the one or two primary strategies implemented at the treatment plant over the 12 month reporting period. The adaptive management process begins with the requirement to conduct an existing treatment performance assessment after permit coverage notification. Submittal of the electronic Annual Report (Special Condition S9) through the WQWebPortal satisfies the Nitrogen Optimization Plan requirement. See Appendix C in the draft permit for Annual Report Questions that document optimization for dominant loaders.

### *Draft Condition S4.C.1 Treatment Process Performance Assessment*

First, Permittees must conduct a process evaluation to establish current treatment performance and the existing TIN removal rates. This process evaluation may be conducted through process modeling or an equivalent analysis. This initial assessment is required to help Permittees evaluate viable optimization approaches at the WWTP prior to implementation. Initially, each Permittee must also develop an optimization goal and determine the three most viable optimization strategies capable of achieving the goal. The goal may simply be to stay under the action level. Other goal examples include meeting a specific TIN concentration target

or improving treatment process efficiencies. After initial selection, Permittees must maintain a prioritized list of optimization strategies at all times and update that list as part of the Annual Report requirement.

Prior to implementing the preferred optimization strategy, Permittees must develop an anticipated performance metric. Ecology suggests using % removal for this performance metric; however, Permittees may propose a different criteria and detail the approach in the Annual Report. The performance metric must provide the Permittee with the ability to compare expected vs. actual treatment improvement from optimization.

#### *Draft Condition S4.C.2 Optimization Implementation*

Permittees must also document how they implemented the preferred optimization strategy including costs, the time required for full implementation, the start date of the preferred strategy, unanticipated challenges, and impacts to the overall treatment performance as a result of any process changes.

Permittees will document the annual average TIN concentrations and loads from the reporting period in the Annual Report in addition to the TIN removal rate observed (or other performance metric if identified by the Permittee). The observed results must be compared to the performance metric developed in condition S4.C.1.c. These results inform the adaptive management required at the WWTP. While permit required monitoring must be used to track optimization progress, Permittees may need to use internal process control sampling locations in addition to influent and effluent monitoring. Laboratory accreditation is not required for process control monitoring and should not be reported on DMRs.

The facility specific action level represents the current discharge condition at each of the treatment plants. Ecology intends for the implemented optimization strategies to help each Permittee stay below their facility specific action level. This prevents additional nitrogen loading into Puget Sound during the period while Ecology completes modeling necessary to determine numeric WQBELs. Permittees can maintain the optimization strategy implemented provided they met the self-identified performance metric and stayed below the action level. Adaptive management is required if Permittee stayed below the action level but did not meet the performance metric. In this case, the Permittee can refine the implementation of the selected alternative or, they can elect to pursue a different optimization strategy for the next 12-month period. Exceeding the facility specific action level requires the Permittee to execute a corrective action to reduce the effluent nutrient load per S4.D.

#### *Draft Condition S4.C.3 Influent Nitrogen Reduction Measures/Source Control*

In addition to identifying opportunities to reduce effluent TIN loads through optimization, Permittees must also develop a program to reduce influent TIN loads. Permittees must review non-residential sources of nitrogen, septage handling practices (if applicable) and any opportunities for pre-treatment. Elimination of RV and boat pump out services are not applicable to this condition. However, Permittees may investigate changes to wastestream

management practices related to RV and boat pump out services. Given that the primary source of nitrogen in domestic wastewater is from urine, influent reduction opportunities may be limited. Therefore, in addition to reviewing pre-treatment opportunities, Permittees must also begin to identify different approaches for reducing TIN from new dense residential development and commercial buildings.

#### *Draft Condition S4.D Action Level Exceedance Corrective Actions*

The existing **303(d)** listings for DO throughout Puget Sound requires Ecology to prevent additional pollutant loadings that create the impairment. An action level compliance assessment occurs at every 12-month interval following the permit effective date. Ecology will use the monitoring data required under this permit and submitted via WQWebDMR to determine whether the Permittee exceeded the action level over the previous 12-month period. Permittees must also document action level exceedances in their Annual Report. Following documentation of the first exceedance, Permittees must begin to develop a strategy for reducing their effluent load by 10%. The most recent documented annual average load must be the basis for the 10% reduction. This level of reduction is consistent with the need to offset increased loads due to population growth while Ecology works to determine final effluent limits for the regional permittees. For Permittees with “bubbled” action levels, Ecology will evaluate exceedances using the cumulative TIN load totals from each WWTP owned and operated by the Permittee. If a corrective action is triggered for a jurisdiction with a bubbled action level, the Permittee must apply the 10% reduction to the bubbled total.

Strategies considered for reducing loading must include increasing production volumes of reclaimed water (if applicable to the facility), implementing side stream treatment for a portion of return flows from solids treatment, reducing influent nitrogen loads, alternative effluent disposal options and any other intermediate treatment alternative which results in decreased nitrogen loads into Puget Sound prior to major facility upgrades. Water quality offsets under Chapter WAC 173-201A-450 cannot be used for this purpose as final, numeric WQBELs have not been established.

The proposed approach to reduce effluent loads will be due in conjunction with the next annual report, 12 months after self-reporting the first action level exceedance. Permittees must submit a proposal to reduce the TIN load that addresses how to meet this 10% reduction requirement within the 1<sup>st</sup> and 2<sup>nd</sup> permit cycles (5-10 years). This proposal may need meet requirements for an engineering report (Chapter 173-240-040 WAC). An engineering report would be required for side stream treatment design and other major treatment process additions. An engineering report is not required for solutions that have been previously approved by Ecology but not yet constructed, influent load reduction, increased reclaimed water production (for a previously identified beneficial use), or other alternatives that do not result in a major process addition or change.

A second, consecutive action level exceedance requires the Permittee to immediately begin implementation of the proposal to reduce effluent loading by 10% upon Ecology’s approval. The two consecutive year exceedance requirement results from acknowledgement that the



action level calculation does not include a provision to account for inter annual weather variability. When a second exceedance falls in the last year of the permit, the Permittee must still implement the preferred alternative as this requirement will bridge the period between this first permit cycle and the end of a compliance schedule for meeting final WQBELs, once established. An update to the WWTP's Operation and Maintenance manual must be provided to Ecology no later than 30 days after implementation so that facility records are kept current. Non-consecutive exceedances do not require immediate corrective action. Rather, Permittees must submit the plan for reduction by the date specified in S4.D and then implemented following a third action level exceedance during the permit term.

An action level exceedance does not constitute a permit violation provided the Permittee follows through with the corrective action requirements and satisfies the other narrative effluent limits listed in Special Condition S4.A in the draft permit, including the Annual Report requirement documenting optimization.

#### *Annual Reporting*

Ecology has developed an electronic annual report to standardize the optimization reporting requirements for Permittees. The Annual Report submittal will describe the well-documented approach the Permittee used to select and evaluate the effectiveness of the optimization strategy including a comparison of actual vs. anticipated results and the adaptive management necessary to stay below the WWTP's action level. Questions for Permittees can be found in Appendix C of the permit. Ecology encourages Permittees to begin the Annual Report several weeks ahead of the March 31<sup>st</sup> submittal date to allow plenty of time for adequate completion.

#### *Draft Condition S4.E Nutrient Reduction Evaluation*

Ecology considers planning for meeting future water quality based effluent limitations to be a BMP and part of the narrative effluent limit for this permit cycle. Compliance with this narrative limit requires submittal of the Nutrient Reduction Evaluation (NRE) by the date listed in the draft permit. LOTT does not need to complete the NRE requirement described in Condition S4.E. This treatment plant already has an effluent limit below 3 mg/L TIN in their individual NPDES permit for TIN during the critical season of April through October. In addition, the Budd Inlet TMDL, scheduled for completion in early 2022, will require compliance with the individual facility wasteload allocation upon EPA approval. No additional planning for LOTT WWTP is required at this time.

The treatment infrastructure improvements necessary to achieve final effluent limits capable of protecting water quality will require a stepwise process over several 5 year permit cycles. This is due to the time required for alternative selection, engineering design, and construction of new treatment processes in addition to financial planning. Completion of a planning exercise during this first permit term is necessary to minimize the time required to ultimately achieve final numeric effluent limits once developed.

Ecology intends to provide flexibility and incentives to address nutrients comprehensively on a watershed scale. Water quality trading as allowed under Chapter 173-201A-450 WAC will likely be part of the final solution upon establishment of numeric WQBELs for each Permittee. The NRE may include a water quality offset framework as part of the required alternatives analysis. However, Ecology must approve any formal water quality-trading framework in consultation with Tribes who have an interest in its development.

As proposed with the January 2021 preliminary draft, the NRE must consider different final treatment concentration targets for TIN. Ecology expects final numeric effluent limits for domestic WWTPs in the region to be a mix of technology and water quality based limits. Therefore, all plants subject to permit condition S4 must consider two treatment thresholds in the NRE. Unlike the preliminary draft, Ecology is not providing the upper level effluent limitation for this analysis. Permittees must determine the upper limit, analogous to a technology based effluent limitation, through the identification of AKART for nitrogen removal at their WWTP. Permittees must also assess treatment alternatives capable of meeting 3 mg/L TIN (or the equivalent load) on average, annually and seasonally, which represent possible future water quality based-effluent limits.

This planning document also requires an assessment of current treatment technology including site specific flows, loads, and population growth projections within the sewer service area for a 20 year planning period. Site-specific constraints and other treatment implementation challenges must be part of the analysis. Ecology will review and approve this plan. This report must be prepared for each WWTP specified under draft permit special condition S4. Entities that own and operate more than one WWTP may submit one comprehensive plan to satisfy this permit condition. Permittees that would like to work together may also submit a combined report that satisfies all requirements in draft condition S4.E.

The current body of knowledge regarding nutrient treatment technologies continues to evolve as researchers develop and study new microbial populations and advanced treatment processes. Section G1-5.4 of the Criteria for Sewage Works Design (Ecology, 2019) contains information for permittees when selecting a new or developmental treatment technology as a preferred treatment alternative. Permittees interested in evaluating a non-traditional treatment approach shall work closely with the Ecology permit manager for their individual permit early on in the scoping phase to ensure development of an appropriate pilot study that satisfies the Agency's needs for future plan approval. Ecology recommends that permittees also work with any interested third parties during scoping, project development and pilot testing. This increases situational awareness and provides an avenue for information sharing, which may help decrease risk when exploring efficacy of a new or developmental technology. Ecology encourages creative approaches to reducing nutrient loads in Puget Sound and understands the Agency will need to support any permittee that elects to pursue innovative solutions that have not yet seen full-scale implementation in the state.

### *Treatment Technology Analysis*

First, the Permittee must conduct an AKART analysis to determine a reasonable level of treatment for nitrogen removal. The term “reasonable”, in the context of AKART directly relates to affordability of an engineered treatment solution. AKART reflects the level of treatment most suited to a technology based effluent limitation.

As discussed earlier in this fact sheet, Ecology’s AKART approach for nutrient removal, specifically nitrogen removal for the Puget Sound area, continues to evolve. All treatment plants must meet AKART under 90.48.010 RCW. Secondary standards in Chapter 173-221 WAC do not include nutrient requirements. All plants when initially designed and constructed met the secondary treatment regulation; however, a site-specific evaluation is now required in light of the existing DO impairments related to nutrient over enrichment in Puget Sound.

In addition to making an AKART determination, which will represent a technology based approach for controlling nitrogen, the NRE must evaluate treatment alternatives for meeting the lower limit of technology for nitrogen removal both year round and seasonally. This lower limit of technology, which Ecology estimates to be approximately 3 mg/L TIN, reflects modeling scenarios and represents a concentration Permittees may expect if required to meet a WQBEL. Early Year 1 modeling results currently in publication indicate that some treatment plants will need to meet this level of treatment to protect the receiving water. Alternative effluent management options (e.g., disposal to ground, identification of reclaimed water beneficial uses) can be considered for this alternative. As with the AKART determination, this treatment assessment must include an economic evaluation for each technology considered.

#### *Economic Evaluation*

In order to satisfy this permit condition, Permittees must develop capital, operation and maintenance costs, and net present value estimates using real discount rates in the most recent Appendix C of The White House’s Office of Management and Budget Circular No. A-94 for each treatment alternative evaluated for meeting AKART and 3 mg/L TIN (or the equivalent load) on average both annually and seasonally. A cost per pound of nitrogen removed for each treatment technology is also required. The Permit Writers Manual (2018) contains limited guidance on how to conduct an economic evaluation for deriving effluent limits when applying AKART in Chapter 4, Section 3.12. Permit conditions to develop associated costs for proposed treatment alternatives reflect this guidance.

Permittees must also provide details regarding the basis for the current utility rate structure used to support the existing level of wastewater treatment provided to the service area. In the review of the current rate structure, Permittees need to indicate how allocations of direct costs for operation and capital expenditures are recovered from payment of utility fees, how often the rate structure is reviewed to ensure financial solvency, and the last time wastewater rates were either increased or decreased and the impetus for that change. In addition, impacts to the current rate structure for each treatment technology evaluated must be provided.

## *Environmental Justice Review*

Ensuring environmental justice (EJ) is a priority in Washington State ([SB5141 Final Bill Report](#)) and Ecology is committed to making decisions that do not place disproportionate burdens on **overburdened communities** and vulnerable populations. Permittees must conduct a demographic analysis using the best available population data (such as US Census data, [EPA's EJSCREEN](#), or [DOH's WTN](#)) within their sewer service area to identify communities color, low income populations, Tribes, and indigenous populations. And, after this analysis, Permittees must conduct an affordability assessment to identify whether wastewater utility rate increases would disproportionately impact populations with environmental justice considerations. Ecology recommends using [EPA's Financial Capability Assessment for Clean Water Act Obligations](#) (2021) when looking at options for assessing financial capabilities to implement requirements under the Clean Water Act.

Opportunities to set alternative wastewater rates must also be considered as part of the planning requirement in the draft permit. Permittees must propose how an alternative rate structure can be used to prevent the low-income communities identified in the initial screening from being adversely affected by rate changes. This can include an evaluation of a tiered rate structure to offset adverse effects to the lowest income populations within the sewer service area or other innovative rate structure measures (e.g., fixed vs. variable charges, efficiency oriented rate design, or usage based rates) that ensure affordability when adopting a new rate structure to support treatment upgrades. Identification of overburdened communities and barriers to affordability do not absolve jurisdictions from upgrading treatment processes to meet water quality standards. Jurisdictions must develop a solution that accommodates the need to protect the receiving water while also providing a level of service to all residents within their community. Lastly, the EJ Review must include any positive community effects that may be the result of treatment improvements identified as the preferred alternatives; these may include positive impacts to fishing and harvesting through preservation of Tribal Treaty rights, enhanced opportunities for recreation, and other improvements that may result from decreased nitrogen loads into Puget Sound.

## **S5. REQUIREMENTS FOR WWTPS WITH SMALL TIN LOADS**

The discharge limits in S5 are described above in Rationale for Narrative Water Quality-Based Effluent Limitations and Consideration of Narrative Water Quality-Based Limits for Numeric Criteria.

Condition S5 in the draft permit pertains only the WWTPs that constitute the minority of the domestic point source nutrient load to Puget Sound. The treatment plants that are in this category are generally smaller than the largest loaders and/or have more advanced treatment in place which drives down their effluent nutrient load.

Ecology received comments on the preliminary draft permit regarding revising requirements for these WWTPs. As a result, Ecology reconsidered the approach for these plants. While the

narrative limit approach is the same for these facilities, the BMPs which constitute a narrative water quality based effluent limit under 40 CFR 122.44(k) are slightly different. Overall, Ecology found that these plants have limited capacity to implement the same BMPs as the dominant loaders. And, given the magnitude of the TIN effluent load in relation to the plants in Condition S4, Ecology determined that the requirements in the draft permit for plants in Condition S5 could be implemented at a different pace while making incremental progress in TIN load reductions.

## MONITORING

Permittees subject to requirements under S5 have a monitoring schedule listed in S6.B that more accurately reflects the size of plants in this category. Monitoring frequency is limited to 1-2 times per month, depending on the parameter. Compliance with the monitoring portion of the narrative limit requires timely submittal of each discharge monitoring report.

## NUTRIENT OPTIMIZATION PLAN

Permittees subject to requirements under S5 must submit the once per permit cycle Nitrogen Optimization Plan to Ecology through the electronic report requirement in S9.D by March 31, 2026. Compliance with this narrative limit requires timely submittal of a complete report. Ecology encourages Permittees to begin the electronic optimization reporting several weeks ahead of the March 31<sup>st</sup> submittal date to allow plenty of time for adequate completion. See the Optimization Approaches section under S4 of this fact sheet for suggestions of different optimization strategies available for Permittees. Permittees may work together to satisfy this requirement; however, each Permittee must complete the one-time report documenting individual facility progress through Ecology's WQWebPortal.

Action levels are not part of the narrative effluent limit for Permittees in Condition S5; therefore, there are no corrective actions for this group of Permittees. As a group, they constitute less than 1% of the cumulative domestic point source TIN load into Puget Sound. Permittees must still review their existing treatment performance, select a suite of optimization strategies for their facility, set a performance goal, implement the strategy and evaluate the implementation and document any adaptive management used to refine implementation.

## AKART ANALYSIS

Permittees subject to draft permit condition S5 must complete an engineering analysis to determine what constitutes all known and reasonable treatment (AKART) for nitrogen removal at their treatment facility. Compliance with this narrative limit requires submittal of the AKART analysis by the date listed in the draft permit. Permittees may elect to complete this planning task together or separately. If electing to work together, one document may be submitted by the date listed in the permit. Also, a jointly developed document must address AKART treatment alternatives for each type of treatment plant owned and operated by Permittees working together to satisfy this permit condition.

Each of these treatment plants has an approved engineering report for their existing level of treatment, which currently meets secondary treatment requirements under Chapter 173-221 WAC. Ecology's *Permit Writer's Manual* (2018) states that AKART is "a technology based approach to limiting pollutants from wastewater discharges which requires an engineering judgement and an economic judgement."

As previously stated, Ecology expects that domestic point sources subject to coverage under this permit will be required to meet a range of final effluent TIN concentrations. While some S5 permittees may need to meet a stringent effluent concentration to address a localized impact directly associated with a specific discharge most will need to implement a less rigorous treatment technology that still goes beyond secondary requirements listed in Chapter 173-221 WAC. At this time, Ecology does not know which S5 Permittees will have to meet the lower effluent limit, which is why this grouping will be held to an AKART analysis in the draft permit, only.

This AKART analysis must include a review of current treatment technologies at the WWTP, including influent volumes and regional growth trends for the next 20 years. Alternatives for reducing effluent TIN loads must be assessed as part of this analysis. Ecology has not provided an effluent treatment target because each discharger must make the determination regarding what constitutes a 'reasonable' level of treatment for nitrogen removal.

Permittees may use elements from a previously approved planning document to satisfy this permit condition. A technical memo that references applicable sections of a previously approved document and also provides the other required plan elements may be submitted to Ecology in this instance. See the Environmental Justice Review section in this fact sheet for a description of how to meet the EJ requirements for the AKART Analysis.

## **S6. MONITORING REQUIREMENTS**

The monitoring approach outlined in S6 is consistent with the monitoring, recording, and reporting requirements of WAC 173-220-210 and 40 CFR 122.41 and includes consideration of the certainty, risk, cost, and the objectives of the permit. Certainty provides a level of confidence that the data are representative of the pollutants in the discharge. The risk is an assessment of the environmental impacts of pollutants. The monitoring cost considers all associated monitoring expenses, such as time to sample, expense of sampling and analysis, any accreditation expenses, training and equipment requirements. The objectives define the purpose of the sampling which are to track optimization progress and better quantify total inorganic nitrogen (TIN) loads to Puget Sound.

The monitoring frequency established in this permit is consistent with WAC 173-220-210(1)(b) and 40 CFR § 122.48(b). Ecology set sampling frequencies to characterize the nature of the discharge reasonably using recommendations from the Advisory Committee convened in March 2020. Sampling frequencies based on facility size have changed from what Ecology proposed in the preliminary draft. Ecology reduced the number of monitoring categories from three to two

and reduced the required sampling based on feedback from commenters. The revised monitoring schedules will adequately characterize the discharge from both categories of WWTPs covered by the draft permit.

## WASTEWATER SAMPLING REQUIREMENTS

Conditions S6.A. and S6.B. requires representative sampling of influent and effluent and authorizes sampling at locations currently defined in the permittee's individual NPDES permit to satisfy this requirement. The frequency of the analysis is broken down into different categories based on plant's size. A primary factor influencing this facility size based monitoring approach were the recommendations from the PSNGP Advisory Committee. The monitoring requirements in the draft permit gives Ecology the ability to assess the characteristics of the facility's effluent and the effectiveness of select nutrient reduction activities identified in the Nutrient Optimization Plan. If the permittee does not have an effluent flow meter, report flows following the same method used for individual permit reporting.

In addition to volumetric flow so that each Permittee can calculate loading, the draft permit contains requirements for influent and effluent monitoring of five core parameters. These include: 5-day carbonaceous biochemical oxygen demand (CBOD<sub>5</sub>), total ammonia, nitrate-nitrite, total Kjeldahl nitrogen (TKN) and total organic carbon.

CBOD<sub>5</sub>, a subset of BOD<sub>5</sub>, measures the amount of dissolved oxygen required for biological oxidation of carbon compounds in a wastewater sample. Unlike BOD<sub>5</sub>, the CBOD<sub>5</sub> analysis excludes the oxygen demand for nitrogen species and is more appropriate where plants have an incomplete conversion of ammonia to nitrate. When coupled with the BOD<sub>5</sub> monitoring requirement in permittee's individual NPDES permits, this parameter provides a more complete picture of the treatment performance and carbon removal. Permittees can use BOD<sub>5</sub> and CBOD<sub>5</sub> to track operation efficiencies by calculating percent removal using influent and effluent concentrations. This parameter can be used for optimization reporting and in future SSM scenarios.

Total ammonia the sum of ammonia (NH<sub>3</sub>) and ammonium (NH<sub>4</sub><sup>+</sup>) is the most common form of inorganic nitrogen in raw domestic wastewater. Raw domestic wastewater predominately contains ammonia due to the presence of urine. Most treatment plants oxidize ammonia into nitrate through the addition of oxygen.

Nitrate plus Nitrite when added to total ammonia yields total inorganic nitrogen (TIN), the parameter subject to regulation in the draft permit. The treatment process oxidizes inorganic nitrogen from ammonia to nitrite and nitrate, and reduces inorganic nitrogen from nitrate to nitrite, ammonia, or nitrogen gas. The treatment system biota converts inorganic nitrogen into organic nitrogen. Settled solids retain the biota in the treatment system. Wasting sludge removes settled solids with organic nitrogen from the treatment system. TIN in the effluent represents readily available nutrient that the treatment system has removed. Very little nitrate + nitrite is found in wastewater influent which is why the draft permit proposes a reduced

influent monitoring frequency. Plants must use influent and effluent TIN concentrations to help support optimization and influent source reduction. Cumulative TIN loading must also be calculated on a running monthly basis for all permittees. Dominant loaders must use this cumulative TIN load as part of the annual action level assessment in the Nitrogen Optimization Plan requirement (See draft Condition S4.C).

**Total Kjeldahl Nitrogen (TKN)** is an important parameter for understating nitrification efficiency and provides Permittees with the ability to evaluate the biological treatment system. Comprised of ammonia plus total **organic nitrogen**, TKN allows the amount of organic nitrogen in a wastewater sample to be quantified. Generally, the secondary treatment process converts most of the dissolved organic nitrogen to ammonia where it is available to the biota of the treatment system. Settling removes most of the particulate organic carbon. This parameter is also valuable to Ecology for use in SSM scenarios as little to no organic nitrogen data exists for most permittees. Ecology proposes infrequent (1/month) influent and effluent TKN monitoring for all permittees in the draft permit.

**Total organic carbon (TOC)** provides Ecology with the ability to quantify the amount of organic, carbon containing pollution discharged from each WWTP. The Environmental Assessment Program has identified carbon as a secondary nutrient driving eutrophication in the Salish Sea. Currently, Ecology has no data on TOC from the domestic WWTPs proposed for coverage under the draft permit. Ecology intends this once per month effluent monitoring to supplement model inputs and to develop correlations with BOD<sub>5</sub>/CBOD<sub>5</sub>. SSM scenarios utilize BOD as a surrogate for available carbon. Measurements of TOC will help to refine the relationship between BOD/CBOD and available carbon.

#### ANALYTICAL METHODS AND QUANTITATION LEVELS

Historically, the method detection limit (MDL) was used to determine compliance as all data at or above the MDL were considered adequate for assessing compliance and supporting environmental actions. The MDL, however, is the level at which a chemical's presence or absence can be detected, and provided limited information with regard to actual concentration. Ecology uses the term "quantitation level" as equivalent to the term "minimum level of quantitation (ML)" which is used by EPA. The ML is defined by EPA as the lowest concentration of an analyte that can be measured with a defined level of confidence. This may also be called the reporting level by some laboratories. Based on Ecology's *Permit Writers Manual (2018)*, the draft PSNGP defines the quantitation level as the lowest level at which the entire analytical system must give a recognizable signal and acceptable calibration point for the analyte. It is equivalent to the concentration of the lowest calibration standard, assuming that all method-specified sample, weights, volumes, and clean up procedures have been employed.

All NPDES permits require that EPA approved analytical procedures listed in 40 C.F.R. § 136 be used for permit limit compliance sampling and analysis. Permittees must also comply with the NPDES *Use of Sufficiently Sensitive Test methods for Permit application and Reporting Rule* (Federal Register 49001). This requirement mandates that when an EPA-approved method exists, the most sensitive method must be used when quantifying the pollutant in a discharge.



The draft permit requires specific analytical methods and establishes quantitation levels, consistent with Ecology's *Permit Writer's Manual*. If an alternate analytical method from 40 CFR § 136 is sufficient to produce measurable results from the sample, the Permittee may use that method for analysis. If a facility uses a contract laboratory to monitor wastewater, it must ensure that the laboratory uses the method and meets or exceeds the method detection levels required by the permit. The permit describes what to do in certain situations when the laboratory encounters matrix effects. When a facility uses an alternative method as allowed by the permit, it must report the test method and quantitation level (QL) on the discharge monitoring report.

Condition S6.C requires documentation of both influent and effluent sampling to track nutrient loads entering Washington waters of the Salish Sea and quantify results of optimization. The draft PSNGP specifies routine sampling and analysis requirements to provide Ecology with continued, representative information on the pollutants of concern in the domestic wastewater discharges.

Where the monitoring requirements of the draft permit overlap with the monitoring requirements in the individual permit, the same analytical result may be applied to both permits if the Permittee elects to use the influent and effluent monitoring locations identified in the individual permit.

Condition S6.D requires the Permittees to maintain flow measurement calibration at the frequency established by the manufacturer. Permittees must maintain calibration to ensure effluent loading nutrient load calculations are as accurate as possible.

Condition S6. E. Ecology requires facility to use a laboratory registered or accredited under provision of Chapter 173-50 WAC, Accreditation of Environmental Parameters, to prepare all monitoring data.

The 2007 Methods Update Rule (MUR) provided some flexibility to modify EPA approved method listed in 40 CFR § 136.6. This portion of the rule describes potentially allowable method modifications and requirements that analysts need to meet to use methods that incorporate some of these modifications for NPDES compliance monitoring without prior EPA approval. EPA no longer accepts applications for approval of methods that fall within the flexibilities promulgated with the 40 CFR 136.6 rule revision. According to EPA, "any method that relies on the same underlying chemistry and determinative techniques as other methods approved at 40 CFR § 136 for measurement of a given parameters is acceptable for use in NPDES compliance monitoring provided that the requirements for establishing equivalent performance documentation specified at 40 C.F.R. § 136.6 are met." Often these are referred to as EPA-Equivalent methods. Permittees must receive accreditation for these EPA equivalent methods in order to use them for monitoring and reporting required by this permit. Use of these methods for internal process control information does not require accreditation.

Condition S6.E allows for the Permittee to request a reduction of the sampling frequency after (12) months of monitoring. Permittees must submit a written request to Ecology outlining

which monitoring parameters they propose to reduce and the basis for that reduction. Ecology will look at the DMR data submitted from the beginning of the permit term to the data of the request. Ecology will grant the request only if the DMR data appear representative, consistent, and the Permittee has demonstrated that the distribution of concentrations will not change with a lower sampling frequency. Parameters with highly variable results will not be subject for reduction. If granted, Ecology will address the Permittee's monitoring change through a coverage modification rather than modifying the permit. Permittees must follow public notice requirements described in S2.D at least 60 days prior to the intended reduction effective date.

## **S7. DISCHARGES TO 303(D) OR TMDL WATERBODIES**

The basis for the non-numeric water quality based effluent limitation approach for all Permittees is covered under *Authority to Include Non-Numeric Water Quality Based Limits*.

If EPA approves an applicable Total Maximum Daily Load (TMDL) for WWTPs owned and operated by a Permittee covered by the general permit, Ecology will address any permit requirements related to the approved TMDL in the Permittee's individual permit or through a permit modification.

## **S8. SOLID AND LIQUID WASTE DISPOSAL**

This section is intended to ensure that handling and disposal of solid or liquid wastes do not result in a violation of applicable water quality regulations (40 CFR 122.44(k)(2), 40 CFR 125.3(g), and RCW 90.48.080., and WAC 173-216-110(1)(f)).

This permit does not require the development of a solid waste control plan nor does it authorize discharge of leachate from solid waste material.

## **S9. REPORTING AND RECORDKEEPING REQUIREMENTS**

The reporting and recordkeeping requirements of Special Conditions S9 are based on Ecology's authority to specify any appropriate reporting and recordkeeping requirements to prevent and control waste discharges. Reporting of monitoring results are specified in 40 CFR 122.44(i)(3 and 4) and WAC 173-226-090(3). Discharge Monitoring Reports must be submitted to Ecology even if there was no discharge. Recordkeeping requirements in the draft permit are specified in 40 CFR 122.41(j)(2) and WAC 173-220-210(2)(b). The requirements of Condition S9 will assure that Ecology records are maintained and demonstrate compliance with sampling requirements by the facility.

### ***DRAFT CONDITION S9.C ANNUAL REPORT FOR DOMINANT LOADERS***

Ecology proposes Permittees subject to condition S4 submit an Annual Report documenting optimization and adaptive management for the 2022-2027 Permit term, which is a report for

the previous calendar year to be submitted by March 31, annually. The first year Annual Report due by March 31, 2023 will cover the period from January 1, 2022 – December 31, 2022. Submittal of the Annual Report will occur through Ecology's WQWebPortal. Permittees will report on optimization strategies, treatment performance assessments and adaptive management implemented at the WWTP during each reporting period. Questions for the Annual Report pertaining to dominant loaders will document the Nitrogen Optimization Plan requirements and can be found in Appendix C of the draft permit.

#### *DRAFT CONDITION S9.D SINGLE REPORT FOR SMALL LOADERS*

Ecology proposes Permittees subject to condition S5 submit a single report documenting optimization and adaptive management for the 2022-2027 Permit term. This Report due by March 31, 2026 will cover the period from January 1, 2022 – December 31, 2025. Submittal of the Report will occur through Ecology's WQWebPortal. Permittees will report on optimization strategies, treatment performance assessments and adaptive management implemented at the WWTP during each reporting period. Draft questions for the Single Report pertaining to smallest loaders will document the Nitrogen Optimization Plan requirements and can be found in Appendix D of the draft permit.

### **S10. PERMIT FEES**

RCW 90.48.465 requires Ecology to recover the cost of the water quality permit program. Wastewater fees are established through a rule development process that includes the input of stakeholders, interested parties, and an advisory committee and includes an outreach process. Any new fee proposal will provide public comment opportunity in amending the existing fee regulation (Chapter 173-224 WAC).

## **GENERAL CONDITIONS**

General Conditions are based directly on state and federal law and regulations and have been standardized for all NPDES permits issued by Ecology.

**CONDITION G1** requires discharges and activities authorized by the draft permit to be consistent with the terms and conditions of the permit in accordance with 40 CFR 122.41.

**CONDITION G2** requires responsible officials or their designated representatives to sign submittals to Ecology in accordance with 40 CFR 122.22, 40 CFR 122.22(d), WAC 173-220-210(3)(b), and WAC 173-220-040(5).

**CONDITION G3** requires the Permittee to allow Ecology to access the facility and conduct inspections of the facility and records related to the permit in accordance with 40 CFR 122.41(i), RCW 90.48.090, and WAC 173-220-150(1)(e).

**CONDITION G4** identifies conditions that may result in modifying or revoking the general permit in accordance with 40 CFR 122.62, 40 CFR 124.5, and WAC 173-226-230.

**CONDITION G5** identifies conditions for revoking coverage under the general permit in accordance with 40 CFR 122.62, 40 CFR 124.5, WAC 173-226-240, WAC 173-220-150(1)(d), and WAC 173-220-190.

**CONDITION G6** requires the Permittee to notify Ecology when facility changes may require modification or revocation of permit coverage in accordance with 40 CFR 122.62(a), 40 CFR 122.41(l), and WAC 173-220-150(1)(b).

**CONDITION G7** prohibits the Permittee from using the permit as a basis for violating any laws, statutes or regulations in accordance with 40 CFR 122.5(c).

**CONDITION G8** requires the Permittee to reapply for coverage 180 days prior to the expiration date of this general permit in accordance with 40 CFR 122.21(d), 40 CFR 122.41(b), and WAC 183-220-180(2).

**CONDITION G9** identifies the requirements for transfer of permit coverage in accordance with 40 CFR 122.41(l)(3) and WAC 173-220-200. When control or ownership of the facility from which the authorize discharge emanates changes, the new **owner** must obtain permit coverage, either through a transfer of permit coverage per Condition G9, or by applying for the permit per Condition S2.

**CONDITION G10** prohibits the reintroduction of removed substances back into the effluent in accordance with 40 CFR 125.3(g), RCW 90.48.010, RCW 90.48.080, WAC 173-220-130, and WAC 173-201A-240.

**CONDITION G11** requires Permittees to submit additional information or records to Ecology when necessary in accordance with 40 CFR 122.41(h).

**CONDITION G12** incorporates all other requirements of 40 CFR 122.41 and 122.42 by reference.

**CONDITION G13** notifies the Permittee that additional monitoring requirements may be established by Ecology in accordance with 40 CFR 122.41(h).

**CONDITION G14** describes the penalties for violating permit conditions in accordance with 40 CFR 122.41(a)(2).

**CONDITION G15** provides the regulatory context and definition of "**Upset**" in accordance with 40 CFR 122.41(n).

**CONDITION G16** specifies that the permit does not convey property rights in accordance with 40 CFR 122.41(g).

**CONDITION G17** requires the Permittee to comply with all conditions of the permit in accordance with 40 CFR 122.41(a).

**CONDITION G18** requires the Permittee to comply with more stringent toxic effluent standards or prohibitions established under Section 307(a) of the Clean Water Act in accordance with 40 CFR 122.41(a)(1), WAC 173-220-120(5), and WAC 173-201A-240.

**CONDITION G19** describes the penalties associated with falsifying or tampering with monitoring devices or methods in accordance with 40 CFR 122.41(j)(5).

**CONDITION G20** requires Permittees to report planned changes in accordance with 40 CFR 122.41(l)(1).

**CONDITION G21** requires Permittees to report any relevant information omitted from the permit application in accordance with 40 CFR 122.41(l)(8).

**CONDITION G22** requires Permittees to report anticipated non-compliances in accordance with 40 CFR 122.41(l)(2).

**CONDITION G23** defines appeal options for the terms and conditions of the general permit and of coverage under the permit by an individual discharger in accordance with RCW 43.21B and WAC 173-226-190.

**CONDITION G24** invokes severability of permit provisions in accordance with RCW 90.48.904.

**CONDITION G25** prohibits *bypass* unless certain conditions exist in accordance with 40 CFR 122.41(m).

# TUPPER MACK WELLS PLLC

November 15, 2023 - 1:46 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 102,479-7  
**Appellate Court Case Title:** Birch Bay Water and Sewer District, et al. v. State of WA, Dept. of Ecology  
**Superior Court Case Number:** 20-2-02539-6

### The following documents have been uploaded:

- 1024797\_Answer\_Reply\_20231115134232SC494548\_6063.pdf  
This File Contains:  
Answer/Reply - Answer to Petition for Review  
*The Original File Name was 2023 11-15 Respondents Answer in Opp to Pet for Review - Supreme Ct No 1024797.pdf*

### A copy of the uploaded files will be sent to:

- ECYOlyEF@atg.wa.gov
- bob@carmichaelclark.com
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- matt@hendricksb.com
- ronald.lavigne@atg.wa.gov
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### Comments:

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