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October 8, 2019

Nate Lubliner, General Permits Unit Supervisor  
Washington Department of Ecology  
3190 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008-5452

Submitted online at <http://ws.ecology.commentinput.com/?id=HMk9A>

#### Re: Developing a Puget Sound Nutrient General Permit

Dear Mr. Lubliner:

Thank you for the opportunity to comment on the preliminary determination to develop a Puget Sound Nutrients General Permit. As an environmental organization dedicated to protecting and restoring freshwater ecosystems across the Northwest, The Freshwater Trust ("TFT") appreciates this chance to provide input on the potential use of a general permit to regulate nutrients. TFT supports efforts to address the impairment of watersheds caused by nutrients and believes that a general permit offers a valuable option to advance that cause. To ensure such a permit reflects the most effective strategy, however, TFT recommends including a market-based trading component, which has the potential to generate the most efficient nutrient reductions while also protecting the needs of local communities.

Founded in 1983, TFT is an 501(c)(3) nonprofit conservation organization committed to accelerating the pace and scale of restoration of freshwater ecosystems. Over the past 30 years we have conducted numerous river restoration projects to fulfill grant obligations as well as compliance obligations under the Endangered Species Act and the Clean Water Act ("CWA"). Over the past decade, TFT has collaborated with a variety of stakeholders and regulators to help pioneer the use of Water Quality Trading ("WQT") across the West. TFT currently manages multiple WQT programs in Oregon and has been an active partner in developing the regulatory structures for trading in Oregon, Idaho, and California. TFT is also a steering committee member of the National Network on Water Quality Trading and helped develop the *Draft Regional Recommendations for the Pacific Northwest on Water Quality Trading* in collaboration with the Washington Department of Ecology.<sup>1</sup> These experiences have taught us many valuable lessons about developing CWA compliance programs that generate meaningful water quality improvements while balancing the interests of the local communities. We now bring these lessons to bear in commenting on the potential General Permit.

#### **General Permit Represents a More Effective Strategy**

A general permit offers a viable and coherent strategy for improving the water quality of the Puget Sound. Considering all of the point sources jointly under a single general permit will allow the Department of Ecology to craft a more holistic strategy for addressing the issue. Compared to an individual permit strategy, a

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<sup>1</sup> [https://willamettepartnership.org/wp-content/uploads/2014/09/PNW-Joint-Regional-Recommendations-on-WQT\\_ThirdDraft\\_2014-08-05\\_full1.pdf](https://willamettepartnership.org/wp-content/uploads/2014/09/PNW-Joint-Regional-Recommendations-on-WQT_ThirdDraft_2014-08-05_full1.pdf)

general permit enables the Department to take a more watershed-based perspective. Rather than having to craft an overarching strategy then apply that strategy to nearly 70 facilities independently over the course of several years, a general permit can implement that same strategy in a uniform and straightforward manner without having to wait for the renewal of existing permits.

A general permit also facilitates more effective adaptive management as the implementation and results of a single permit, even one that applies to dozens of sources, can be tracked and studied more easily. After implementing the first iteration of the general permit, the outcomes can be analyzed and the reissued permit can be adjusted accordingly. This adaptation is much more difficult in the context of dozens of individual permits. Similarly, if the general permit contains some issue or if new information arises, the permit can be revised and reissued rapidly with just a single administrative process. Thus, a general permit constitutes the more appropriate tactic for addressing nutrient impairment in the Puget Sound as it offers a greater degree of flexibility, responsiveness, and efficiency.

### **A General Permit Allows for Collaborative & Innovative Approaches**

Nutrients represent a difficult constituent for wastewater facilities to address. Treatment facilities must design and construct new treatment technologies to remove nutrients, an expensive and time-consuming process. This expense, however, is not uniform between the facilities. Some of the permitted dischargers will be able to remove notable amounts of nutrients at a significantly lower price. Given the uneven burden among the facilities, the general permit should allow for collaborative compliance strategies that utilize point-to-point source WQT to the extent that no localized impairment occurs. Such a program would facilitate greater water quality improvements with improved economic efficiency, thereby benefiting both the Puget Sound and the surrounding communities.

The EPA has repeatedly expressed its “strong support for [WQT] and other market-based programs to maximize pollutant reduction efforts and improve water quality.”<sup>2</sup> In order to incentivize the adoption of such programs, the EPA has issued multiple guidance memorandum to assist regulators in developing these programs.<sup>3</sup> Likewise, non-governmental organizations with direct experience designing and implementing WQT programs, including TFT, have published reports detailing lessons learned and providing insight for the development of future trading programs.<sup>4</sup> Hence, a wealth of resources exist to support the development of a general permit that promotes market-based solutions.

In its 2003 Water Quality Trading Policy, the EPA expressly contemplated the circumstances currently facing the Department of Ecology, stating: “EPA also encourages the use of watershed general permits, where appropriate, to establish pollutant-specific limitations for a group of sources in the same or similar categories to achieve net pollutant reductions or water quality goals through trading.”<sup>5</sup> Furthermore, WQT has proven very successful in circumstances almost identical to the Puget Sound. Beginning in 2002 Connecticut issued a general permit for nitrogen dischargers that covered nearly 80 POTWs across the state in an effort to address dissolved oxygen levels in the Long Island Sound.<sup>6</sup> That

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<sup>2</sup> Memorandum from David P. Ross, Assistant Administrator U.S. E.P.A. Office of Water, to Regional Administrators, Updating the Environmental Protection Agency’s Water Quality Trading Policy to Promote Market-Based Mechanisms for Improving Water Quality (Feb. 6, 2019).

<sup>3</sup> U.S. EPA, Water Quality Trading Toolkit for Permit Writers (2007, rev. 2009), [www.epa.gov/npdes/pubs/wqtradingtoolkit.pdf](http://www.epa.gov/npdes/pubs/wqtradingtoolkit.pdf); U.S. EPA, NPDES Permit Writers’ Manual, EPA-833-K-10-001 (2010).

<sup>4</sup> National Network on Water Quality Trading, Building A Water Quality Trading Program: Options & Considerations (2015); Water & Env’t. Found., Advances in Water Quality Trading as a Flexible Compliance Tool (2015).

<sup>5</sup> U.S. EPA, Water Quality Trading Policy, 68 Fed. Reg. 1608, 1609 (Jan. 13, 2003), <https://www.govinfo.gov/content/pkg/FR-2003-01-13/pdf/03-620.pdf>.

<sup>6</sup> Connecticut Department of Energy & Environmental Protection, Nitrogen Control Program for Long Island Sound [https://www.ct.gov/deep/cwp/view.asp?a=2719&q=325572&deepNav\\_GID=1635](https://www.ct.gov/deep/cwp/view.asp?a=2719&q=325572&deepNav_GID=1635).

permit assigns discharge limits to each facility but allows for the facilities to engage in trading to achieve those limits. This program exceeded the target goals and has resulted in a 65% reduction in nitrogen levels from the 1990 baseline in just over a decade. Other states such as Virginia, North Carolina, and Minnesota have successfully implemented similar programs. These examples prove the viability of a market-based strategy in the context of a general permit as a means to achieve the necessary reductions and satisfy the applicable water quality standards. In the Puget Sound such a market could even leverage recent technological advancements to surpass the success of these programs by incorporating modern analytics and technologies such as blockchain or other smart ledgers to minimize transactional costs, maximize efficiencies, and ensure the efficacy of the program.

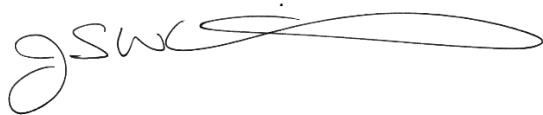
#### **Addressing Nonpoint Source Nutrient Loading with a General Permit**

Compounding the difficulty of addressing nutrients, treatment facilities often represent only one of the sources of nutrient loading—nonpoint sources are commonly one of the largest sources of nutrients entering a watershed. Yet as the CWA does not have jurisdiction over the majority of nonpoint sources, these sources of impairment remain uncontrolled. WQT offers a solution to this dilemma by creating a mechanism to leverage point source regulatory obligations in order to achieve cost effective nonpoint source reductions through incentivized voluntary project implementation. This type of nonpoint source trading program can easily be incorporated into a point-to-point source trading program, either at the outset or in later iterations of the general permit. This tactic has proven successful in Virginia, which incorporated nonpoint source trading into the larger WQT program and continues to comply with the nutrient reductions contemplated in the Chesapeake Bay TMDL and the associated implementation plan. Although point sources report a preference to trade with each other, the inclusion of a nonpoint source component adds additional flexibility and offers a means to address pollution that may otherwise be beyond the scope of the CWA.

#### **Conclusion**

The Department of Ecology should pursue a general permit as a means to efficiently address nutrient pollution in the Puget Sound. A general permit provides the flexibility and adaptability necessary to solve the nutrient impairment in this important waterbody. Moreover, consideration should be given to including provisions in the permit to foster a WQT market. Such a market allows point sources to effectively manage risk, reduce the cost of compliance, and better manage the timing of technological upgrades while still making meaningful strides towards improving water quality. Furthermore, a trading market creates a mechanism for curtailing sources of nutrients beyond the scope of the general permit itself. The Department of Ecology should consider the precedents of other states that have successfully crafted market-based strategies to address nutrient pollution and apply those lessons for the benefit of the Puget Sound.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Whitworth", with a long, sweeping horizontal line extending to the right.

Joe Whitworth

President, The Freshwater Trust  
(503) 222-9091 ext. 11  
[Joe@TheFreshwaterTrust.org](mailto:Joe@TheFreshwaterTrust.org)