

City of Tacoma Environmental Services

Please find attached the City of Tacoma Environmental Services comments.



Submitted via Rulemaking Comment Portal

William Weaver
General Permit Writer
Water Quality Program
State of Washington Department of Ecology
P.O. Box 47696
Olympia, WA 98504-7696

August 14, 2024

Re: City of Tacoma Comments on Draft Financial Capability Assessment

Dear Mr. Weaver:

The City of Tacoma (“Tacoma”, “City”) appreciates the opportunity to comment on the Washington State Department of Ecology (“Ecology”) proposed Draft Interim Financial Capability Assessment Guidance (Ecology FCA Guidance), Ecology Publication 24-10-034, for the Puget Sound Nutrient General Permit (PSNGP).

Environmental health is a priority for the City of Tacoma. For over a decade, we have been a leader and steadfast partner in regional discussions on finding the right balance when it comes to nutrients and protecting the health of the Puget Sound. We are continuing to work collaboratively on sensible and sustainable long-term solutions that protect the Puget Sound. We also want to ensure that measures that are put into place actually have the potential to make a measurable positive impact to the environment, and that we are using reliable science and the best available data to determine the appropriate actions at a sustainable cost for our ratepayers, particularly when there is a potential to significantly impact the housing supply and affordability for many households in Tacoma.

For decades, the mission of Puget Sound clean water utilities has been focused on protection of water quality and successful compliance with regulatory requirements for secondary treatment, wet weather controls, toxics reduction, stormwater management, and beneficial use of biosolids. These water quality protection efforts require utilities to extensively plan, fund, construct, operate, and maintain billions of dollars in investments in their complex wastewater infrastructure. New regulatory requirements with the potential to add significant technical, operational, and economic impacts need to be carefully balanced with the understanding of the necessity and expected benefits. It is especially important that uncertainties are addressed with permit structures that provide opportunities for adaptive management over time to ensure that investments are on-target, effective, and produce tangible results.



Tacoma provides the following comments regarding the Ecology FCA Guidance:

1. Initial Concerns Regarding the City's Current FCA Results for the PSNGP:

The City started its evaluation for the financial capability assessment (FCA) as required by the PSNGP for the Nutrient Reduction Evaluation (NRE) earlier in 2024. In June of 2024, Ecology issued the Ecology FCA Guidance which tailors the United States Environmental Protection Agency (EPA) FCA guidance to Washington State utilities. The Ecology FCA Guidance is primarily grounded in the latest 2023 EPA FCA guidance; however, there are several key takeaways from the Ecology FCA Guidance that will affect the City's FCA approach.

The Ecology FCA Guidance provides for the evaluation of impacts with Washington specific data using EPA FCA Guidance Alternative 1. Using national benchmarks limited the evaluation of community impacts in the State of Washington and can misrepresent local hardship. The updated guidance uses Washington State financial metrics as a benchmark rather than national financial metrics. The City generally agrees with this approach; however, Tacoma also has some concerns that are detailed in this comment letter.

The Ecology FCA Guidance acknowledges using the lowest quintile residential indicator (LQRI) as a preferred metric for evaluating the burden placed on low-income households. The LQRI explores the costs of clean water services for households at the 20th percentile of income (LQI) instead of households at the median. This better reflects low-income burdens and has been a recommended metric from industry groups. The City has calculated the LQRI as part of its initial assessment.

An element of the City's FCA initial evaluation using EPA FCA Guidance includes a comparison of Tacoma's median household income (MHI) to the national MHI (similarly for lowest quintile income). Tacoma's MHI is \$81,616, Washington State MHI is \$90,325, and the national MHI is \$74,755. The Ecology FCA Guidance evaluates local income and assigns a mid-range result when it is within +/- 25% of the benchmark MHI. Tacoma's MHI is 9.18% higher than the national benchmark and 9.64% less than the Washington State metric, resulting in the same outcome under either approach. However, this does not emphasize that Tacoma's income is below the Statewide median rather than above the national median, which is an important distinction to understanding Tacoma's affordability concerns.

Another element of the EPA FCA Guidance that is modified by the Ecology FCA Guidance is the lowest quintile poverty indicator (LQPI). This part of the assessment compares income at the LQI, population below 200% of the federal poverty level, households receiving SNAP benefits, vacant housing units, and employment rates to a national/state benchmark. There is a



minimal change to the overall score when shifting from a national to a state benchmark, with both results indicating a medium impact for Tacoma with current wastewater rates. This medium impact does not include other rate impacts including renewal and replacement of aging infrastructure, responding to evolving regulatory requirements in addition to nutrient removal, e.g. emerging contaminants, and other significant capital projects required to maintain the existing utility and capacity needs for growth. These other rate impacts are practical realities for wastewater utilities and their ratepayers to consider and understand when assessing affordability and financial capacity.

As part of the NRE, Tacoma has already started using EPA FCA Guidance Alternative 2 as well as other affordability metrics to more holistically evaluate long-term rate impacts on the City's burdened communities. It is concerning that the Ecology FCA Guidance did not consider the Alternative 2 or other criteria. The use of Alternative 2 and alternative metrics or criteria is further discussed later in this letter.

QUESTION: Why is the Ecology FCA Guidance so narrow in focus, i.e. why does it not consider Alternative 2 or other alternative metrics or criteria for understanding financial capacity and affordability?

2. It is Unclear Whether the Financial Capability Assessment Provided by Ecology is the Only Approach Ecology Will Accept for Permittees to Comply with Required PSNGP Analyses

In the Ecology FCA Guidance, Ecology notes the multiple ways in which the Ecology FCA Guidance differs from the guidance provided by EPA, and the reasons why the Ecology FCA Guidance is better-suited to analyze the economic and environmental justice impacts of Washington- and Nutrient Permit-specific projects. However, it is unclear whether the Ecology FCA Guidance is the only approach permittees under the PSNGP may use to comply with required analyses, or whether alternative approaches for NRE will be accepted.

For example, the Ecology FCA Guidance states, “*while Ecology recommends continued use of EPA’s FCA guidance, the release of the February 2023 version (revised March 2024) and updated EPA spreadsheet tool created an opportunity to review and improve its usefulness for evaluating public project impacts in the context of state-specific data.*” Department of Ecology, *Draft Interim Financial Capability Assessment Guidance* (Updated June 2024), pg. 9. Additionally, while the Ecology FCA Guidance references the opportunity to “improve” the usefulness of the EPA FCA, it does not discount the EPA FCA’s usefulness entirely. *Id.*



QUESTION: Does this language mean Ecology will still accept analyses performed using the EPA FCA (including Alternative 2)?

The term “recommend” appears multiple times throughout the document, such as where the agency “recommends” certain considerations in the Ecology FCA Guidance, steps to take when performing the analyses, or materials permittees should submit to the agency’s Water Quality Permitting Portal. *Id.* at 10-11. The pervasive usage of the word “recommend” makes the Ecology FCA Guidance appear non-binding, thus allowing permittees to utilize approaches other than the Ecology FCA Guidance when conducting the required NRE. However, Ecology also incorporates more binding language, such as the statement that “permittees *shall* provide project costs at the Class 5 level of estimates.” *Id.* at 14. Further, although Ecology is “recommending” certain actions, the Ecology FCA Guidance appears written with an assumption that all permittees will utilize its new tools and amended process for analysis.

QUESTIONS: Can the agency clarify whether the Ecology FCA Guidance is a binding document and therefore the only approach permittees can utilize when performing the required analyses? If not, can the agency more clearly acknowledge there are other appropriate and accepted approaches that should be considered?

3. Alternative Financial Assessment Options:

In the PSNGP Fact Sheet, Ecology stated “*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*” (page 51). The EPA FCA Guidance from 2021 has continued to evolve and was updated in 2023. The current 2023 EPA FCA Guidance has two alternatives to consider:

A. Alternative 1: Customer Burden Matrix (expanded 1997 EPA approach)

- i. The Ecology FCA Guidance has only considered this option.
- ii. Generally intended for schedule development and negotiation.

B. Alternative 2:

- i. This alternative provides a more nuanced and specific assessment of local affordability including rate model forecasts with long-term rate impacts. It can account for many competing priorities at a utility including (to name a few examples):
 - i. Asset management: renewal and replacement of aging infrastructure
 - ii. Increasing operating costs



- iii. Declining water sales due to water conservation (which can impact utility rate structures that rely on water usage versus fixed rate structures)
- iv. Utility specific rate structure and other rate limitations
- ii. This alternative would provide a more accurate financial impact to the City’s rate payers than Alternative 1.

In federal guidance, EPA includes Alternative 2 to provide a more realistic representation of financial impacts by including the entire schedule of projects in a cash flow analysis. The intent is to represent realistic wastewater utility bills that are within reasonable bounds when establishing compliance schedules.

- “Unlike Alternative 1, EPA has not recommended benchmark percentages of household income for Alternative 2. However, EPA intends to keep the percentage of household income spent on wastewater utility bills within reasonable bounds when establishing compliance schedules. Where drinking water costs are substantial and impacting households, a community may submit information on those costs as part of its financial and rate model. See Section II.c.1 for more direction. Schedules developed using Alternative 2 should be generally consistent with the recommended scheduling boundaries in Exhibit 9. Communities are encouraged to provide local information to EPA to support any predictions of a likely occurrence of rate shock. Other Metrics, such as drinking water costs, may also impact rate shock.” (EPA 2024)

QUESTION: Why did Ecology not consider Alternative 2?

REQUEST: Ecology should include Alternative 2 in the financial capability assessment guidance for Puget Sound. Although Alternative 2 requires additional information and supporting analysis for cash flow, it should be provided as an option because it provides a more complete representation of financial impacts. Further, Ecology should acknowledge in the financial capability assessment guidance for Puget Sound that wastewater utility bills must be kept within “reasonable bounds,” just as EPA has acknowledged in the federal FCA guidance.

In addition to the EPA FCA Guidance, there are other resources and approaches for evaluating and measuring household affordability including:



- A. Affordability Ratio (AR20): using the basic sewer price as a percentage of disposable income after non-water essential expenses for the 20th income percentile
- B. Hours worked at minimum wage
- C. Household Burden Indicator
- D. Poverty Prevalence Indicator
- E. Burden After Housing Costs
- F. Typical Bills by Neighborhood
- G. Additional Resources:
 - i. American Water Works Association (AWWA)
 - ii. Water Environment Federation (WEF)
 - iii. University of Washington Self-Sufficiency Standards
 - iv. Massachusetts Institute of Technology (MIT) Living Wage Calculator
 - v. United States of America Census Public Use Microdata Areas (PUMAs) Statistics

The City has already used the other resources and approaches as part of its initial FCA evaluation. Tacoma has identified that essential expenses currently exceed income at the 20th percentile in the City. As part of the NRE, Tacoma has already started using EPA FCA Guidance Alternative 2 as well as the other metrics and resources shown above. The City’s FCA evaluation is ongoing as the NRE components are completed.

QUESTION: Why did Ecology not consider these other resources and affordability metrics?

4. Environmental Justice Considerations

While the EPA FCA Guidance and other industry resources rely on the LQI focused on the 20th percentile of income, it may not be the best or only indicator to understand impacts to our community’s burdened and vulnerable people. Income is only one component of the impact and a more meaningful approach using an equity lens would be to understand what the “living wage” and “cost of living” are in the community. Overall, the financial component of the Environmental Justice evaluation needs to have a holistic approach beyond just income. The City plans on using the other financial resources noted in Comment 3 to address this concern.

5. Integrated Planning

As part of the March 2024 Revision to the EPA FCA Guidance, EPA included the following regarding the “History of Relevant Guidance”:

“2. Integrated Planning Framework



In 2012, EPA developed the Integrated Municipal Stormwater and Wastewater Planning Approach Framework (Integrated Planning Framework) that offers a voluntary opportunity for a municipality to develop an integrated plan to meet multiple [Clean Water Act] CWA requirements. Integrated planning is a process that municipalities can use to achieve clean water and human health goals while addressing aging infrastructure, changing population and precipitation patterns, and competing priorities for funding. With the release of the Integrated Planning Framework, the Agency clarified that an FCA could include the following costs: stormwater and wastewater; ongoing asset management or system rehabilitation programs; existing CWA related capital improvement programs; collection systems and treatment facilities; and other CWA obligations required by state or other regulators. On January 14, 2019, the Water Infrastructure Improvement Act (WIIA) (H.R. 7279) added a new section 402(s) to the CWA to include the 2012 Integrated Planning Framework.”

The Integrated Planning sections of the EPA FCA Guidance have not been included as part of the Ecology FCA Guidance. Integrated plans and components would “*include a financial strategy and capability assessment that ensures investments are sufficiently funded, operated, maintained and replaced over time and include consideration of current and planned rates and fees.*” This is relevant and important for Washington State utilities that are facing potential significant upgrades at the same time as robust asset management requirements (aging infrastructure), capacity upgrades, and multiple regulatory requirements. All of these will ultimately impact the rate payers to shoulder the burden of costs from all of the significant rate drivers, not just nutrient removal. In addition, this should be used to inform any compliance schedule. This is discussed further in the next comment section.

QUESTION: Why did Ecology not include Integrated Planning components that are part of the EPA FCA Guidance and important and relevant to Washington State utilities?

6. 2023 EPA Guidance on Life Cycle and Cost Assessments of Nutrient Removal Technologies in Wastewater Treatment Plants

The Ecology FCA Guidance does not allow for evaluation of the life cycle cost assessments and the impact to long-term utility rates. In August 2023, EPA released a revision to its Publication EPA 832-R-21-006A, “Life Cycle and Cost assessments of Nutrient Removal Technologies in Wastewater Treatment Plants” (EPA Nutrient Lifecycle Guidance). In its Executive Summary, EPA stated the following:

“Overall, two key findings emerged from this analysis. First, clear trade-offs in cost and potential environmental impact were demonstrated between treatment level configurations.



This suggests that careful consideration should be given to the benefits from lower nutrient levels compared to the potential environmental and economic costs associated with treatment processes used to achieve those levels. Combining outcomes into metrics such as nutrients removed per dollar or per unit energy may help to identify configurations that strike an efficient balance between these objectives. For example, this analysis found that electricity per unit of total N and P equivalents removed remained consistent from Level 2 through Level 4 but was 2-3 times higher for Level 5 configurations. Second, this analysis demonstrated the value of a life cycle approach to assessing costs and benefits. For example, considering trace pollutants from a life cycle perspective illuminated that the benefits of increased trace pollutant removal from effluent could be outweighed by trace pollutant emissions from materials and energy usage for the Level 5 configuration, an insight that would not have been gained by analyzing on-site WWTP processes alone. In summary, considering multiple economic, social, and environmental costs and benefits from a life cycle perspective can provide critical insights for informed decision making about wastewater treatment technologies.”

The PSNGP calls for treatment alternatives to be developed for achieving AKART for nitrogen removal on an annual basis and a seasonal average of 3 mg/L TIN from April through October. Achieving effluent TIN of 3 mg/L is an extraordinarily level of treatment that is expected to be costly and result in external environmental impacts that should be carefully considered before being required. Ecology’s seasonal average of 3 mg/L TIN would be equivalent to EPA’s Level 4 in the Life Cycle Cost Analysis, the highest level of treatment short of reverse osmosis (Level 5). Costs increase as the treatment levels increase, as does energy use, chemical use, excess solids residuals generation, and damaging greenhouse gas emissions. Nitrogen removal at these levels requires supplemental carbon addition using dangerous chemicals, such as methanol. Ecology’s FCA doesn’t account for the costs of these externalities that impact the environment at this level of treatment.

The City requests that Ecology review the EPA Nutrient Lifecycle Guidance to revise the Ecology FCA Guidance to account for more factors to evaluate the balancing point where there are diminishing benefits and disproportionate impacts to the environment and economy. The EPA Nutrient Lifecycle Guidance should also be considered as part of Ecology’s decision making moving forward for nutrient removal regulations. The City plans on using the EPA Nutrient Lifecycle Guidance as part of its NRE effort.

7. Fundamental Disconnect with PSNGP Financial Requirements

The PSNGP NRE requires utilities to provide “viable implementation timelines that include funding, design, and construction for meeting both the AKART and seasonal average 3 mg/L TIN preferred alternatives” (page 18 and 26 of the PSNGP Permit document). The Ecology



FCA Guidance states, “*We also emphasize that [FCA] results, for the purpose of the Nutrient Permit, are not intended for schedule negotiation.*” This statement from the Ecology FCA Guidance regarding schedule negotiation is concerning and appears to contradict the NRE requirement. Furthermore, the Ecology FCA Guidance also notes that the spreadsheet tool aligns with the 2023 EPA FCA Guidance “*to evaluate the economic impact of water quality decisions (2023 EPA guidance pg. 34).*” Affordability and schedule development cannot be decoupled and cannot be when the NRE requires viable timelines to be proposed and is an essential tool to address affordability challenges.

8. Financial Capability Assessment (FCA) Spreadsheet Tool Review Comments

The following comments and questions apply to Ecology’s FCA Excel spreadsheet tool.

QUESTION: Please address how do the proposed metrics and source data accompanying the FCA tool account for the rapid increase in inflation and significant changes in socioeconomic criteria since 2020?

FCA Tool Indices

A. Residential Indicator (RI)

Water utility bills typically include drinking water, wastewater, and stormwater. The residential impacts of water utility costs are often not exclusive to just wastewater improvements. Emerging contaminants of concern, such as PFAS and 6-PPD-q are prompting new or developing regulatory limits that could significantly increase required costs for drinking water and storm water infrastructure. Though a wastewater service may be “low impact” per FCA guidance, including other water services can quickly move communities into a “high impact” category as costs easily double when including drinking water and stormwater. Measuring the impacts of wastewater exclusive of drinking water and stormwater is not representative of a “one water” or “Integrated” approach that explores the affordability of all water services within a community. This approach is similar to our concerns regarding “Integrated Planning”.



This “one water” theme is fundamentally represented when evaluating billing approaches, debt service requirements, bonds, and operations and maintenance expenses. Though a utility bill typically delineates costs between water service types, it does not send separate bills for each water service. Similarly, the proportional share of revenues, debts, and expenses is not always strictly compartmentalized between different water services. It is possible to quantify shares of CIP programs, revenue, debt service, etc. that are dedicated to wastewater, but often bond values and operational and administrative costs are not explicitly divided across water services in annual financial reporting. All water service costs should be included when evaluating the FCA guidance.

As a test application of Ecology’s spreadsheet FCA tool using realistic entries representing baseline and project conditions for an example wastewater utility reveals a surprising lack of sensitivity to the magnitude of project costs. The results in the Expanded Financial Capability Assessment Analysis are similar in terms of the Low, Mid-Range, or High Impact over a very broad range of Project Costs. In an example application of the FCA tool, it was found that doubling the annual debt service and O&M expenses would only result in a shift from “Low Impact” to a “Medium Impact.” This suggests that the formulation of Ecology’s FCA tool may not be sensitive enough to reflect the severity of the financial impact of a doubling of costs. In addition, the FCA tool is not sensitive to the existing cost burden of a combined utility bill that includes wastewater, stormwater, and drinking water. Nor is it sensitive to the same customer base that receives separate utility billings for wastewater and drinking water. In some cases, the O&M and debt service expenses are combined for both drinking water and wastewater/stormwater. This suggests the FCA tool may only account for one half of the total water bill cost burden to customers. This may under-estimate the impact of proposed projects, especially for over-burdened members of the community.

REQUEST: Please address why the RI does not consider current billing rates and projected rate changes on a high level? It appears that there is a benchmark value for acceptable rate increase percentages that could serve as a reference for projected cost impact scoring.

B. Financial Capability Indicator (FCI)

FCA guidance is intended to capture impacts specific to wastewater, but bond values and ratings are typically associated with improvements made for all water services. A “One water” approach should be taken to ensure that the FCI is not misrepresenting “strength” in comparing overall water capability and exclusive wastewater capability. The FCA tool

appears to overestimate a community's strength because it takes the strength of bonds that fund non-wastewater projects and applies that strength exclusively to wastewater. Comparison should be on a par basis such that if bonds include all water costs, the residential indicator (RI) should include all water costs.

- i. The sensitivity of the FCI regarding the *Property Tax Revenue Collection Rate (Line 803)* seems disproportionate. What is the basis for the national, industry, etc. benchmarks if the rate is primarily scored based on a percent range of 94-100%? For example, changing the tax collection rate from 98.00% to 98.01% can shift an overall result from "Low Impact" to "Medium Impact". EPA Guidance notes this metric as "*The property tax revenue collection rate is an indicator of the efficiency of the tax collection system and the acceptability of tax levels to residents*". How does the efficiency of the tax collection system and acceptability of tax levels relate to increases in wastewater or other water costs? Is it intended to be representative of utility billing efficacy and rate increase acceptance? More accurate billing-specific data are available that could better represent this indicator. This appears to be a metric that is insensitive with the basis of scoring distributed over 6 out of 100 possible points and is misrepresentative of a rate payer's acceptance of utility rate increases. Utility bill collection and rate increase data should be used to provide more representative metrics for wastewater.
- ii. EPA Guidance states that for the FCI, various financial management indicators "*used to evaluate a permittee's financial management ability are property tax revenue as a percent of full market value of real property and property tax revenue collection rate*". Property tax collection rates are not representative of wastewater utility revenue collection rates. Property tax revenues are arguably more associated with populations not experiencing financial hardship. For example, homeowners paying property taxes as compared to burdened rate payers who may be renting a home. Better information is available that is more specific to a permittee to measure and represent utility bill collection rates. The tool uses the capability of existing wealthy populations (who own property and are probably paying their utility bill consistently) to measure the strength of utility bill collection rates. This may be misrepresentative since delinquent rate payers may not be real property owners or permanent residents.\
- iii. EPA Guidance states that "*Property Tax Revenues as a Percent of Full Market Property Value indicator can be referred to as the "property tax burden" since it indicates the funding capacity available to support debt based on the wealth of the community*". The "*wealth of the community*" and "*funding capacity available to support debt*" in this case appears to be misrepresentative of the real wealth of the community since it is exclusively measuring the financial capabilities of individuals



who are, for example, wealthy enough to own a home and pay the associated property tax. Additionally, the perceived “*funding capacity available to support debt*” assumes property tax revenues relative to full market property value, which can be highly volatile, is representative of funding capacity dynamics for infrastructure improvements that typically do not use property taxes as a funding source. It appears inaccurate to use financial performance indicators of a separate revenue source that doesn’t fund wastewater services to represent wastewater utility financial capabilities. The tool inaccurately assumes property taxes are universally available as a funding source for utilities. It also misrepresents the true debt support availability of a community by evaluating the exclusive population of wealthy property owners and taxpayers.

- iv. Generally, the FCI tool appears to use metrics and measures that are not specific to funding and debt dynamics associated with wastewater infrastructure improvements. It appears that enough wastewater specific data is readily available for wastewater specific use in the FCI to evaluate a wastewater utility’s specific billing rate collection success, debt support performance, etc.

9. Inclusion of Funding Resources

The City appreciates Ecology’s efforts to identify general funding resources that may be helpful to wastewater utilities to address the affordability challenges presented by nutrient removal.

REQUESTS:

- a. **The City would like to request a more robust and centralized analysis by Ecology, to consider which funding resources are actually applicable to costs to remove nutrients, what eligibility rules may apply (e.g. are certain programs only available for use by certain wastewater utilities?), and some understanding of the levels of available funding, etc. This would be helpful and more efficient than individual utilities needing to research eligibility and funding requirements of multiple resources, and would help all regional partners better understand the adequacy or gaps in actual funding available compared to the estimated costs utilities will be assessing in their FCAs. This will also better position Ecology in any funding requests and proposals to the legislature.**



- b. Can Ecology share its specific plans to advocate for and request additional state funding or priority of existing state funding to address the affordability challenges of nutrient removal?**

10. Ecology Encouragement for Tiered Rate Structures

In the Ecology FCA Guidance, Ecology states “*While the [Financial Alternatives Analysis] FAA provide permittees, Ecology, and the public, information about mitigating efforts, where high impacts are found it is especially critical that communities 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. In these instances, Ecology encourages permittees to evaluate, or re-evaluate, tiered or other alternative rate structures to offset adverse effects to the lowest income populations within the sewer service area or other innovative 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.*”

This is one of many instances where Ecology has stated in writing (also in the PSNGP) and verbally in the July 24, 2024, Ecology FCA Guidance Workshop that utilities should evaluate alternative or tiered rate structures. The City and other utilities have commented in writing and verbally during the Ecology FCA Guidance workshops that tiered rate structures are unlawful under Washington State law. Tacoma previously provided the following comment regarding this issue in its comments on the Draft PSNGP:

“COMMENT NO. 8: ALTERNATIVE RATE STRUCTURES ARE NOT LEGAL UNDER STATE LAW OR THE WASHINGTON STATE CONSTITUTION

Ecology has recognized that the financial impact of the costs of treatment can create an unreasonable burden upon communities served by wastewater treatment plants. See, Northwest Environmental Advocates v State, 2021 Wash. App. LEXIS 1558 (2021). Overburdened communities will bear a significant and disproportionate burden of the cost of compliance with the Permit.

While the City appreciates Ecology’s effort to address environmental justice by requiring an affordability assessment, the assessment will do nothing to address the disparate impact of the cost burden of the Permit upon communities of color, Tribes, indigenous communities, and low income populations. State law does not allow dischargers to create rate classifications based upon ability to pay, except as authorized pursuant to RCW 74.38.070 for low-income citizens.



See, RCW Chapters 35.67 and 35.92. Tacoma already has a program for rate reductions under this statute. All other rate classifications must be based upon the cost of service and must be allocated equitably based upon service received. See generally, King County Water Dist. No. 75 v Seattle, 89 Wn. 2d 890, 903 (1978). A utility has a duty to fix rates that are just and reasonable and not unduly discriminatory. Faxe v Grandview, 48 Wn. 2d 342, 347 (1956).

Rates must comply with Article 1 § 12 of the State Constitution which requires that rates be non-discriminatory, meaning that rates apply alike to all persons within a class, and that there must be a reasonable ground for creation of different rate classifications. Faxe, 89 Wn. 2d at 348. Rate classifications under state law are based upon such factors as cost of service, the character of the service furnished, or the quantity or amount received. Faxe, 89 Wn. 2d at 349-350. State law sets for the criteria in Chapter 35.67 and 35.92 RCW. Neither state law nor the state constitution allow rate classifications based upon an affordability assessment with the exception of low income rate reductions authorized under state law and which are already being implemented. Accordingly, the concept of a study and proposal for rate alternatives only serves to create false hope that the enormous impact of funding the cost of treatment can be more equitably distributed. Further, it will not address the reasonableness of the overall costs of compliance to be borne by all of the rate payers.

Question:

- In response to comments, can Ecology explain what assessment Ecology has made to address environmental justice impacts from the proposed permit?

- In response to comments, can Ecology explain how the requested report will be used to regulate NPDES permits for publicly [SIC] owned WWTPs?"

Ecology has not responded to concerns regarding unlawful tiered rate structures in person or in written responses, including in the Appendix C Response to Comments for the PSNGP Draft Permit. Even though there is some limited ability to structure rates to include discounted or lower rates for low-income ratepayers, the Utility still needs to collect revenues to cover the entire cost of compliance and will result in even more burden to other ratepayers, including those that may still have challenges absorbing higher rates, but don't meet the eligibility rules for allowable low-income rate programs.

QUESTIONS:

- a. Please state the specific Washington State law that Ecology believes can be used for an alternative or tiered rate structure.**



- b. Does Ecology have specific thoughts or recommendations for lawful and viable tiered rate structures that may work in Washington State?**
- c. What steps has Ecology taken or plan to take to change state law to allow for tiered rate structures?**

11. Understanding of Wastewater Rate Structures

The City is concerned about the lack of opportunity for stakeholder input on this guidance, which missed an opportunity to ensure a robust understanding of how rates are developed, and the legal and practical constraints and opportunities that are part of rate-making in Washington State. Some of the general Ecology statements or recommendations, e.g. encouraging tiered rate structures that are unlawful in Washington State, suggest more collaboration is needed to solve the real funding challenges.

REQUEST:

The City requests that Ecology convene a workshop for respective staff of Ecology and wastewater utilities, along with other experts such as rate and municipal bond experts, to better understand viable rate structure alternatives, and how they are set within Washington State law. The City would be happy to help Ecology and others coordinate a workshop on this topic. The City believes this could be an opportunity for Ecology and the utilities to collaborate on this complex issue.

12. Stakeholder Input Concerns

The draft Financial Guidance continues the Ecology approach to address nutrients in Puget Sound without any real transparency and collaboration. This was evident in the publication of the 2019 Salish Sea Bounding Scenarios Report, the PSNGP, and the draft aquatic life toxic criteria. This approach appears to benefit only the resources of Ecology with little regard to the actual water quality demands in Puget Sound and the benefit of additional water quality treatment on utility rate payers and beneficial uses in Puget Sound. The draft guidance development did not appear to include a robust stakeholder process. It appears that only two in person workshops were held with no hybrid option provided. In addition, the workshops were held during a period of time where other Ecology stakeholder processes were held virtually to allow for more participation. The workshops presented draft guidance that had already been created without stakeholder input. It is likely that many of the concerns provided in this letter may have been discussed and addressed if opportunities for more input were given



earlier in the process. The City will continue to call for a collaborative and transparent process to balance and address the significant investment that will result from future regulations.

QUESTIONS: Did Ecology conduct any stakeholder input prior to the workshops and releasing the draft Ecology FCA Guidance? If yes, what input was given and by what organizations?

13. Financial Capacity Assessment Results

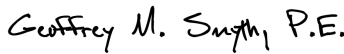
The City would like to understand Ecology's intended use of the FCA Results based on the following questions.

QUESTIONS:

- a. **How will Ecology use the FCA results? Please describe how the agency will use the data provided in Ecology's spreadsheet tool, or using a different method, when submitted by permittees?**
- b. **What is Ecology's intent for evaluating the affordability to take on just nutrient removal? How will this impact its regulations? Will it be used to inform a regulatory schedule as outlined in the NRE requirements to provide a "viable implementation timeline"?**

Thank you for this opportunity to comment on the Draft Interim Financial Capability Assessment Guidance for the PSGNP. We trust our comments are useful. If you have any questions or would like additional information please contact Teresa Peterson, P.E. at 253.591.5766 or tpeterson@cityoftacoma.org.

Sincerely,

Signed by:

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Geoffrey M. Smyth, P.E.
Interim Director, Environmental Services