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RE: Draft Revised Puget Sound Nutrient General Permit for Wastewater Treatment Plant Discharges

The Surfrider Foundation is a non-profit dedicated to the protection and enjoyment of the world's oceans, waves, and beaches for all people. Our network focuses on coastal issues, including clean water, plastic pollution, beach access, climate change, and coastal resilience. On behalf of our broader statewide membership of thousands of ocean users and coastal stakeholders, Surfrider Foundation appreciates this opportunity to provide feedback and recommendations on the Puget Sound General Nutrient Permit XXXXXX.

Wastewater treatment plants are a known contributor to water quality issues in Puget Sound. The Washington Department of Ecology has documented that excess nutrients, specifically nitrogen and phosphorus, from these treatment facilities are a key factor in dissolved oxygen levels falling below state water quality standards. These low oxygen levels can harm marine life, cause fish kills, and place additional stress on an ecosystem experiencing myriad other impacts.

Nutrient pollution can also lead to harmful algal blooms that threaten marine life and pose a risk to human health. Ecology has identified 27 wastewater facilities that are responsible for 99% of the total inorganic nitrogen pollution from all treatment plants in the region. For decades, the Washington Department of Ecology has been aware that wastewater treatment plants are a significant source of water quality degradation in Puget Sound. In a recent briefing, Ecology once again confirmed that municipal wastewater treatment plants "have a reasonable potential to cause or contribute to dissolved oxygen standards impairments in Puget Sound, in some cases far from where the wastewater treatment plant discharges." The Surfrider Foundation believes that these issues are a critical threat to the health of the Sound.

The Pollution Control Hearings Board (PCHB) recently reaffirmed these concerns, concluding that ongoing nutrient pollution from WWTPs:

> "…reduces oxygen levels below those necessary to support aquatic life, makes Puget Sound more acidic, impairs shell formation in marine organisms, alters benthic communities, increases harmful algal blooms, and damages eelgrass meadows." (*PCHB No. 21-082c, Summary Judgment Order at 4*).

Despite these findings, the revised General Permit continues to fall short of what the law and science demand. Ecology is still failing to impose enforceable, numeric effluent limits for nitrogen and phosphorus based on **All Known, Available, and Reasonable Technology (AKART)**—as required under RCW 90.48.520 and WAC 173-216-110. Instead, the agency proposes a "voluntary" general permit framework that is both legally questionable and practically ineffective.

I. Surfrider Opposes the Use of a "Voluntary" General Permit for Nutrient Control

Ecology's continued reliance on a voluntary General Permit—rather than incorporating numeric nutrient limits into individual NPDES permits—delays meaningful action and creates legal uncertainty. The Board has held that Ecology cannot impose additional mandatory conditions through a general permit on dischargers already regulated by individual permits (*PCHB No. 21-082c at 21*). The revised "opt-in" approach appears designed to circumvent these rulings, but voluntary limits do not satisfy state or federal requirements for enforceable effluent limitations.

Surfrider urges Ecology to abandon the voluntary permit model and instead include nutrient limits directly in individual permits. This approach ensures clarity, enforceability, and compliance with statutory obligations.

II. The Revised General Permit Still Fails to Meet Basic Legal Requirements

A. AKART Requirements

State law mandates that Ecology determine and impose AKART-based limits at the time of permit issuance—not at some point in the future and certainly not at the discretion of the dischargers. Established technology exists to achieve effluent concentrations of **3 mg/L total nitrogen** and **0.1 mg/L phosphorus**, and these limits have been implemented across the country for decades. Examples include:

- **Traverse City, MI (2004):** 1 mg/L nitrogen, 0.5 mg/L phosphorus
- **Loudoun County, VA (2008):** 3 mg/L nitrogen, 0.1 mg/L phosphorus
- **Florida (2005–2007):** 40 facilities averaging <3 mg/L nitrogen
- **LOTT Clean Water Alliance (WA):** already below 3 mg/L TIN under its NPDES permit

These precedents clearly establish that AKART for nutrients is technologically and economically achievable. Ecology's failure to set these limits violates RCW 90.48.520, WAC 173-201A-510, and controlling case law.

B. Ensuring Compliance with Water Quality Standards

The Board and Ecology both recognize that current WWTP discharges cause or contribute to violations of dissolved oxygen standards in Puget Sound. Yet the revised General Permit presumes compliance if dischargers merely adhere to permit conditions—even though Ecology admits those conditions will not prevent ongoing violations. This legal contradiction cannot stand.

C. Removal of "Bubbling" and Self-Regulation Provisions
The permit's "bubbling" concept (aggregating multiple plants under one load limit) risks localized hotspots, undermines compliance, and complicates enforcement. Similarly, deferring AKART determination to permittees is contrary to law and prior rulings (*Envt'l Def. Ctr. Inc. v. EPA, 344 F.3d 832 (9th Cir. 2003)*).

III. Delays and Extended Deadlines Are Unacceptable

Ecology has spent decades studying nutrient pollution while failing to act on existing legal obligations. After announcing the General Permit in January 2020, Ecology issued the first version in December 2021—without effluent limits—then stayed portions of it for over two years following litigation. Now, Ecology proposes even more delays:

- General Permit end date extended to December 31, 2027
- Nitrogen Optimization Reports delayed to June 30, 2026
- Nutrient Reduction Evaluations delayed to June 30, 2026

This timeline is contrary to public interest. Immediate action is needed to prevent further ecological harm.

IV. Additional Concerns

- **TIN Action Levels (S4.B):** The current language is ambiguous and could delay corrective actions unnecessarily. It should be revised for clarity.
- **TMDL Compliance (S8):** Deferring effluent limits related to TMDLs to post-coverage letters violates public notice and comment requirements under the Clean Water Act.

Conclusion and Recommended Actions

Surfrider Foundation strongly urges Ecology to:

1. **Abandon the voluntary General Permit** and incorporate numeric nutrient limits into

individual NPDES permits.

2. **Set enforceable AKART-based limits** of **3 mg/L total nitrogen** and **0.1 mg/L phosphorus** for all major dischargers, with a compliance schedule not exceeding three years.

3. **Eliminate provisions** that allow self-regulation, bubbling, or presumptions of compliance.

4. **Accelerate all deadlines** to ensure timely, enforceable action to protect Puget Sound.

We urge Ecology to act decisively to restore the health of Puget Sound. Please contact us with any questions or to discuss these comments further.

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