SQUAXIN ISLAND TRIBE

August 26, 2025

William Weaver
WA Department of Ecology
PO Box 47696
Olympia, WA 98504-7696

Re: Comments on the 2025 Draft Puget Sound Nutrient General Permit

Dear Mr. Weaver,

The following are comments regarding the Puget Sound Nutrient General Permit and its implications for the Squaxin Island Tribe (the "Tribe"). Both the Tribe's 2021 comment letters are attached and remain relevant. The Squaxin Island Tribe is a federally recognized Indian tribe located in Southern Puget Sound in Mason County, Washington with treaty rights to harvest fish and shellfish, "at their usual and accustomed fishing places in the shallow bays, estuaries, inlets and open Sound of Southern Puget Sound and in the freshwater streams and creeks draining into those inlets." See generally United States v. Washington, 384 F.Supp. 312, 378 (W.D. Wash. 1974); United States v. Washington, 459 F.Supp. 1020 (W.D. Wash. 1978). The Tribe's culture and economic well-being depend upon clean water to support abundant and sustainable fisheries. Thus, the Tribe has vital interests in ensuring that laws and regulations intended to protect water quality, and related aquatic habitat, are implemented and enforced so that it can continue to exercise its federal treaty rights and successfully execute its role as a steward and co-manager of Puget Sound.

The federal government maintains a trust responsibility for protection of Tribal Treaty rights. In the case of the Puget Sound Nutrient General Permit ("PSNGP"), due to the delegation of authority for implementation of the Clean Water Act, this Treaty obligation must be fulfilled by the State of Washington. While the PSNGP describes an environmental justice evaluation on p. 14, 21, and 27, the evaluation focuses only on the burden to ratepayers and lost recreational and commercial fishing opportunities. The environmental justice evaluation should be edited to also address violations of Tribal treaty rights.

Elevated nutrients in Southern Puget Sound have a disproportionate impact on the Squaxin Island Tribe.

The Squaxin Island Tribe is uniquely positioned to offer a perspective on Puget Sound water quality. The Tribe's location at the south end of the sound, where nutrients discharged from all parts north accumulate, make regulating municipal wastewater in all areas of Puget Sound especially critical to the Squaxin Island Tribe. Because of low water circulation in Southern Puget Sound, discharged nutrients tend to accumulate there and exacerbate algae blooms, which lead to

low dissolved oxygen conditions and a disproportionate impact on the Squaxin Island Tribe's fisheries and the water quality in its Usual and Accustomed Areas ("U&A").

Harmful effects of low marine dissolved oxygen include acidification, which can prevent shellfish and other marine organisms from forming shells; shifts in the number and types of bottom-dwelling invertebrates; increases in abundance of macroalgae, which can impair the health of eelgrass beds; seasonal reduction in fish habitat and intensification of fish kill events; habitat fragmentation and reduction in habitat for some species; and potential disruption of the entire food web.[1] In particular, impaired conditions exist at the southern tip of Squaxin Island, which has one of the few remaining kelp beds in Southern Puget Sound. Other affected species of great importance to the Tribe include subtidal geoduck, Dungeness crab, sea cucumber, lingcod, and of course, salmon.

Output from Ecology's Salish Sea Model indicates that, in large swaths of the Tribe's U&A, anthropogenic nutrient levels cause violation of the state water quality standards for dissolved oxygen set under the federal Clean Water Act. Ecology is thus obligated to implement measures to reduce nutrient discharges that impact these areas. Treatment improvements across the Salish Sea will contribute to dissolved oxygen improvements in the inlets of concern to the Squaxin Island Tribe.[2] ***These treatment improvements need to be set in motion now through the capital planning of municipalities that own wastewater treatment facilities. The pace of the PSNGP is too slow, and its pressure for action too light, as described below***.

Action levels are too lax.

The nutrient load action levels remain far too permissive. Ecology set these action levels at the 99th percentile upper confidence limit of current loads, inadvertently allowing tons of nitrogen pollution above safe levels for Puget Sound to protect a number that simply triggers planning activities. The highly permissive 99th percentile used as the action level means that Tacoma's loads, and those of several other plants, are well below these egregiously high action levels. We anticipate a scenario in which these lax values become the de facto load limits for far too long, allowing dischargers to continue with status quo approaches. Instead, we recommend that action levels be based on 75th percentiles of nitrogen load estimates by each plant.

Ecology can use the same program and values that produced the 99th percentile values in the January 1, 2022 permit to develop more reasonable statistics, such as the 75th percentile of values for action levels in this optional general permit.

City of Tacoma and King County should be removed from the general permit.

Together, the City of Tacoma and King County facilities represent >60% of the total nitrogen discharges from US plants to Puget Sound. As described above, the Squaxin Island Tribe, because of its location, suffers the impacts of outsized discharge from both of these facilities.

[1] WA Dept. of Ecology, Puget Sound Nutrient Source Reduction Project Volume 1: Model Updates and Bounding Scenarios 10 (2019).
[2] Id. at 80-84.

These two dischargers must make far more substantial progress toward modern sewage approaches than is outlined in the draft permit if a serious attempt at addressing low dissolved oxygen conditions in Southern Puget Sound is to be made. This should be done through individual permit limits and not the flexibility that a general permit may provide. All City of Tacoma and King County facilities should receive permit limits for nitrogen discharges in their individual NPDES permits. Without this pivot to individual permits, the reduction of nutrient discharge to Puget Sound will be insignificant.

We are keenly aware that the state required Spokane to modernize sewage treatment, and Ecology must hold Tacoma and King County to the same standard. That should be done through individual permit limits and not the flexibility that a general permit may provide. Because Tacoma and King County's loads are so large, there are no other entities that Tacoma and King County can trade with – a nutrient credit trading system is simply infeasible for these two large dischargers. The only way for portions of Puget Sound to recover in terms of oxygen is for Tacoma and King County facilities to adapt to modern sewage approaches.

Pace of actual design and construction is too slow.

Treaty resources and harvests have already been affected by excess nutrient loading. Under this permit, municipalities simply would need to monitor for a year, and if their loads go over the action levels, monitor for a second year. Because this permit expires December 31, 2027, and likely would not take effect until January 1, 2026, all of the permit conditions involving contingent planning and actions would produce no substantive progress.

Instead, all permittees should conduct the activities listed as only Corrective Actions in Special Condition S4.D and S5.D of the draft permit before December 2027, regardless of the actual nitrogen discharge levels. This would eliminate Special Condition S4.D.1 and S5.D.1 entirely and require permittees to submit for review a proposed approach to reduce the annual effluent load by at least 10% below the action level. Currently the permit lists those as contingent on discharging above the action levels. However, given that flows and loads are likely to inch up with population growth, dischargers need to begin adjustments to both cap and also begin reducing nitrogen loads to Puget Sound.

Ecology cannot approve any increases in flow for any plant discharging to Puget Sound without concomitant reductions in nitrogen concentrations.

The Tribe expects that some dischargers will seek Ecology's approval before any reductions in nitrogen loads are legally binding. If Ecology were to approve a flow increase for a plant without concomitant requirements to reduce nitrogen concentrations, that action would allow increasing nitrogen loads to Puget Sound. ***We add the utmost gravity to this statement: It is imperative that Ecology does not approve any sewage discharge flow increases without simultaneously requiring nitrogen load reductions resulting from decreases in concentrations.*** Given that treatment plant capital investments occur on a decadal basis, the state cannot afford to lock in what are already antiquated treatment technologies. It has already been our experience with Ecology permit writers that they allow additional pollutant loads in permit renewals unless an outside party

like the Tribe requests that they be limited. We are requesting now that Ecology does not allow additional flow without reductions in nitrogen concentration.

Do not let the wastewater treatment plants avoid or delay necessary improvements at the cost of resources and the health of Tribes and all Washington residents.

In conclusion, act now and act aggressively, as the current circumstances violate the law. The Tribes are not the only communities impacted by dissolved oxygen impairments. Commercial, recreational, and tribal fisheries all experience harm. Tribes and these other interests should not bear the continued externalized cost of excess WWTP nutrient discharges. A slow pace will fail to protect the health and well-being of the resources and the people who depend on them.

Sincerely,

Erica Marbet
Water Resources Biologist
Squaxin Island Tribe

Attachments