

Response to Comments
Tulalip Wastewater Treatment Plant
NPDES Permit Number: WA0024805
August 8, 2024

On April 5, 2021, the U.S. Environmental Protection Agency Region 10 (EPA) issued a public notice for the proposed reissuance of the Tulalip Wastewater Treatment Plant (WWTP) draft National Pollutant Discharge Elimination System (NPDES) Permit No. WA0024805. The public comment period closed on May 24, 2021. Following this first public comment period, the EPA made changes to the draft permit and re-proposed the draft permit for a limited public comment period on October 25, 2023. Comments were accepted through December 29, 2023.

During each of the public comment periods, the EPA received comments from:

- Northwest Environmental Advocates (NWEA)

The EPA requested CWA § 401 certification from the Washington Department of Ecology on April 5, 2021 and received certification on June 3, 2021. No changes were made to the permit as a result of the certification.

The EPA completed informal Endangered Species Act (ESA) consultation with the US Fish and Wildlife Service on October 13, 2021, and formal consultation with the National Marine Fisheries Service (NMFS) on February 14, 2024. NMFS' final Biological Opinion included Terms and Conditions that clarified reinitiation triggers but did not result in any changes to the permit.

This document presents NWEA's summarized comments, and the EPA's responses to those comments. No revisions were made to the permit as result of comments received. Minor permit changes are listed at the end of this Response to Comments.

Comments Received During First Public Comment Period

Comment #1 (NWEA)

As EPA has acknowledged, it must conduct a reasonable potential analysis to determine whether the discharge causes or contributes to violations of the water quality standard (WQS) for dissolved oxygen. However, the fact sheet shows that EPA did not assess whether the discharge has the reasonable potential to cause or contribute to violations of WQS and did not use procedures to account for existing controls on point and nonpoint sources of nutrients and parameters affecting dissolved oxygen and the narrative criterion as required by federal regulations. Puget Sound is impaired for dissolved oxygen because of nitrogen. EPA concludes that there are no 303(d) listed waters at the point of discharge, however, the proximity of dissolved oxygen impairments is not relevant to the evaluation of the need for effluent limits for far-field pollutants like nitrogen. Instead of conducting a reasonable potential analysis, EPA cites to Ecology's planned general permit but fails to explain the relevance of the proposed general permit to EPA's permitting action, how Ecology's future potential "nutrient cap" is relevant to EPA's permitting, and why EPA says that permit limits might be necessary when Ecology has already determined that all dischargers of nitrogen need effluent limits.

Response #1

This comment is no longer relevant following the changes that were made in the revised draft permit that was released for public comment on April 11, 2023. In the fact sheet addendum issued with the revised draft permit, the EPA explained that there is reasonable potential for the Tulalip WWTP to contribute to existing impairments for dissolved oxygen (DO) and acknowledged that nutrients have far-field effects (based on Ecology's finding that all domestic WWTPs discharging to Puget Sound have reasonable potential). The revised draft and final permits include nutrient provisions consistent with Ecology's requirements for small loaders. Regarding concern with these provisions included in the revised draft and final permits, please refer to Response to Comments #7, 9, and 10.

Comment #2 (NWEA)

The draft permit fails to comply with 40 CFR 122.44(d)(1)(ii). This regulation reads, "when determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State WQS, the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water." Nothing in the fact sheet demonstrates that EPA has engaged in this evaluation despite all the evidence about the many other sources of nitrogen pollution in Puget Sound. With regard to nitrogenous oxygen-demanding materials, which this permit does not evaluate, the permit writer must take into account the existing lack of controls on nonpoint sources such as on-site septic systems, which contain no nitrogen controls, and the existing lack of controls on permitted discharges from municipal sewage systems. Ecology has determined that nutrient discharges from sewage treatment plants discharging to Puget Sound cause or contribute to violations of dissolved oxygen WQS and that this determination has been extensively documented. EPA's failure to account for these non-existing pollution controls on point and nonpoint sources renders its draft permit inconsistent with federal regulations and the Clean Water Act.

Response #2

Refer to Response to Comment #1.

Comment #3 (NWEA)

Discharges of nutrients from the Tulalip WWTP cause or contribute to violations of Washington's WQS for dissolved oxygen (WAC 173-201A-210(1)(d)), deleterious material that causes adverse effects (WAC 173-201A-260(2)(a)), and materials that impair aesthetic values (WAC 173-201A-260(2)(b)). As a result, a water quality-based effluent limit (WQBEL) is required for nutrients. The proposed permit fails to even evaluate whether the discharge will cause or contribute to violations of the narrative criteria at WAC 173-201A-260(2)(a) and (b).

EPA cites the narrative criteria and the legal requirement to comply with them. EPA then fails entirely to discuss how these legal requirements are met. There is simply no evidence that EPA made the necessary examination therefore the public can only conclude that it did not. There is no reference to the procedures established in 40 C.F.R. § 122.44(d)(1)(vi). In addition, as this discharge is one of many such discharges

that contribute to violations of the narrative criterion in the waters of the Sound, and the fact sheet is silent on the question of whether EPA took existing controls—or lack thereof—on point and nonpoint sources into account, the proposed issuance of this permit is contrary to law.

Ecology has documented violations of narrative water quality criteria, including algal blooms, Noctiluca and other dinoflagellate blooms, and jellyfish masses at the surface. Other effects of excess nutrients include acidification, shifts in the number and types of bottom-dwelling invertebrates, increases in abundance of macroalgae, which can impair the health of eelgrass beds, seasonal reductions in fish habitat and intensification of fish kill events, and potential disruption of the food web.

These food web disruptions include declines in the populations of the historically dominant forage fishes Pacific herring and surf smelt, coinciding within increases in jellyfish populations. Declines in forage fish abundance may explain reductions in populations of Chinook salmon and orca whales. The abundance of jellyfish constitutes a violation of narrative water quality criteria.

Response #3

As stated in Response to Comment #1, the revised draft permit acknowledges that there is reasonable potential for all WWTPs discharging to Puget Sound to contribute to existing impairments for DO. However, it is impracticable to develop facility specific numeric nutrient WQBELs based on a far-field DO impact because the EPA has insufficient effluent nutrient data to use in modeling of Puget Sound-wide impacts to DO. The Salish Sea Model is still being refined in order to develop appropriate facility-specific WQBELs. The EPA also has insufficient data to determine whether nutrients in this discharge have the reasonable potential to cause or contribute to excursions above WQS for deleterious material that causes adverse effects or impairment of aesthetic values. The permit includes narrative nutrient limits in the form of best management practices (BMPs), including a Nitrogen Optimization Plan (NOP) that requires the facility to immediately begin reducing nitrogen in the effluent and a Nitrogen Reduction Evaluation (NRE) that requires the facility to identify strategies to meet a future numeric effluent limit for nitrogen. It also includes increased nutrient monitoring that can be used to inform the next permit.

Comment #4 (NWEA)

The draft permit violates Tier I of Washington's antidegradation policy (WAC 173-201A-310). Specifically, the continued discharge of nitrogen from this facility violates the antidegradation policy's prohibition on degradation that would interfere with or become injurious to existing or designated uses (WAC 173-201A-310(1)) and the requirement to take appropriate and definitive steps to bring the water quality back into compliance with the WQS (WAC 173-201A-310(2)).

The fact sheet does not discuss how the permit will protect existing and designated uses and that the monitoring requirements for nutrients are not effluent limits. Future possible conditions based on data collection do not conform to the requirements that apply to this permit and EPA is unable to point to "appropriate and definitive steps to bring the water quality back into compliance with WQS."

Response #4

As explained in the Fact Sheet, Tier I ensures existing and designated uses are maintained and protected and applies to all waters. The EPA conducted an antidegradation analysis and determined that the requirements in the permit are the same or more stringent than the previous permit (see Fact Sheet page

57). In the previous permit, the EPA determined there was no degradation to water quality. Furthermore, the following requirements for Tier I facilities are met:

- There is no degradation that will interfere with, or become injurious to, existing or designated uses.
- There are appropriate and definitive steps to bring the water quality back into compliance with the WQS if they are not met.
- If the natural conditions of the water body are of a lower quality than the assigned criteria, the natural conditions constitute the water quality criteria; if water quality criteria are not met because of natural conditions, human actions are not allowed to further lower the water quality, except where explicitly allowed in State WQS.

The permit includes TBELs for five-day biochemical oxygen demand (BOD₅), total suspended solids (TSS), pH, and fecal coliform, which are protective of water quality (see Fact Sheet page 17). The EPA also evaluated discharges of ammonia and temperature and concluded that the discharge did not have the reasonable potential to cause or contribute to excursions above WQS for these constituents and, as a result, the permit does not include limits for ammonia or temperature. The fact sheet addendum concludes that there is reasonable potential for the discharge to contribute to far-field impairments for DO and includes narrative effluent limitations in the form of BMPs to address nutrients which addresses the DO impairment. See Response to Comment #3. Therefore, the EPA has determined that existing and designated uses will be maintained.

Comment #5 (NWEA)

The permit fails to ensure the implementation of all known available and reasonable treatment (AKART). Specifically, enhanced secondary and tertiary treatment for the removal, control, and treatment of nutrients is a known method of removing nitrogen. These treatments are available methods for removal, control, and treatment of nitrogen. Therefore, the use of enhanced secondary and/or tertiary treatment for removal of nitrogen is AKART. It is possible that this facility is using AKART. But EPA does not mention anything about AKART in its fact sheet.

Response #5

AKART is a state regulation that is not part of the State's approved WQS; therefore, the AKART provision does not apply to the EPA. Further, Ecology did not include a condition in the 401 certification requiring anything in the permit to implement AKART.

However, as explained in Chapter 4, Section 3.4 of Ecology's Water Quality Program Permit Writer's Manual (Ecology, 2018), AKART has been defined explicitly in regulation for some categories of dischargers. Such standards for domestic wastewater facilities are published in WAC 173-221 which establishes discharge standards for BOD, TSS, pH, and fecal coliform. WAC 173-221 does not establish discharge standards for any other pollutants, including nutrients. The draft and final permits include effluent limits that are at least as stringent as those defined in WAC 173-221; thus, the permit ensures implementation of Ecology's AKART standard for domestic wastewater facilities.

It should be noted that NWEA petitioned Ecology to define AKART for discharges of municipal sewage to Puget Sound as year-round tertiary treatment to remove nutrients; specifically, to establish effluent limitations of 3.0 mg/L for total nitrogen and 0.1 mg/L (or lower) for total phosphorus. This petition was

denied by Ecology, who stated that the complex relationships between discharger-specific nutrient limits and their impact locally and further afield required further study.

Similar to the PSNGP, the final permits include a requirement for AKART analysis to identify treatment alternatives for nutrient removal as part of the NRE. The permittee must highlight an alternative representing the greatest TIN reduction that is reasonably feasible on an annual basis.

Comment #6 (NWEA)

AKART is also required in order to obtain a mixing zone in Washington State. See WAC 173-201A-400(2); see also *BNSF Railway Co. v. Washington Ecology*, PCHB No. 11-150, Order on Summary Judgment (Dec. 4, 2012) at 20 (“Ecology’s regulation governing mixing zones does require a showing that the applicant has fully implemented AKART before a mixing zone may be granted.”). Without a showing that the facility has met the AKART requirements, EPA cannot issue a permit that relies upon a regulatory mixing zone.

Response #6

As explained in Response to Comment #5, the final permit implements AKART as defined in WAC 173-221 for discharges of domestic wastewater. Therefore, WAC 173-201A-400(2), which requires dischargers to fully apply AKART prior to being authorized a mixing zone, has been satisfied. It should also be noted that Ecology has provided the EPA with a 401 certification that states that all requirements of state law have been met, which includes the mixing zone provision.

Comments Received During Second Public Comment Period

Comment #7 (NWEA)

Numeric effluent limitations for nitrogen discharged from sewage treatment plants are not infeasible. Narrative WQBELs may be established when numeric ones are infeasible, but permits must establish limits that ensure compliance with WQS, and even if determining proper standards is difficult, it is not infeasible. Nitrogen and its impacts on dissolved oxygen are well studied, and the fact sheet acknowledges that a reasonable potential determination has been made that applies to all dischargers to Puget Sound. The receiving water for Tulalip WWTP has had measurements for dissolved oxygen below the criterion. Accordingly, EPA has no basis upon which to conclude that a nitrogen limit is infeasible.

EPA could have used the Salish Sea model to help determine an effluent limit or chosen a limit of 3.0 mg/L, which is noted as technologically feasible and a limit that permittees under the PSGNP may be expected to meet in the future. There are several examples of other EPA permits that establish numeric nitrogen limits without a TMDL, and many states have numerous permits with nitrogen limits.

Response #7

The EPA cannot choose a limit like 3.0 mg/L as a matter of policy. Instead, NPDES permits must contain TBELs or any more stringent WQBELs. See 40 CFR 122.44(d). The EPA has established secondary treatment regulations for POTWs, which are the TBELs that apply to the facility. Further, as described in Response to Comment #3, aside from a lack of TMDL, it is impracticable to develop facility specific

numeric nutrient WQBELs based on a far-field DO impact because the EPA has insufficient effluent nutrient data to use in modeling Puget Sound-wide impacts to DO.

In addition, as described in Ecology's latest Puget Sound Nutrient Source Reduction Project Report – referred to as the Bounding Scenarios Report – modeling has confirmed that implementing nutrient reduction at WWTPs would achieve significant improvements toward meeting the DO WQS; however, the appropriate limits for different facilities are still unknown. Ecology continues to refine the Salish Sea Model to develop appropriate effluent limits.

The EPA has included narrative nutrient limits in the form of BMPs along with required monitoring. The data collected during this permit term will inform future permit decisions. In addition, the facility is required to do an AKART analysis to identify treatment alternatives for nutrient removal that can be used to inform future permit decisions.

Comment #8 (NWEA)

The proposed permit relies on the PSNGP, but doesn't mention that several portions of the PSNGP are stayed because of appeals, and that decisions will likely not be made until late 2023 or in 2024. It is unclear why EPA thinks it can rely on an NPDES permit that is no longer fully in effect as the basis for issuing its own permit without its own analysis.

Conditions that are stayed:

- Narrative requirement prohibiting discharge from causing or contributing to violations of WQS.
- Presumption that a Permittee complies with WQS when the Permittee fully complies with all permit conditions, including planning, optimization, corrective actions (as necessary), sampling, monitoring, reporting, waste management, and recordkeeping conditions.
- Failure to follow the corrective action requirement after discharge of TIN at a level that exceeds the action level identified and authorized by the permit constitutes a violation of the terms and conditions of the permit.
- Requirement to submit for review a proposed approach to reduce the annual effluent load by at least 10% below the action level listed in the permit. 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.
- Permittees (dominant and moderate loaders) 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.
- Permittees (small loaders) must review effluent data collected during the reporting period to determine whether TIN loads are increasing.

Response #8

The EPA acknowledges that several portions of Ecology's PSNGP are stayed and under appeal. As discussed in the fact sheet and fact sheet addendum, anthropogenic sources of nutrients have led to impairments for DO throughout Puget Sound, and the conditions in the permit that are based on conditions in the PSNGP will help to address the issue by assessing nutrient loading from this facility, requiring optimization of operations, and considering ways to further reduce nutrients in the effluent in

the future. Furthermore, the specific conditions that are stayed in the PSNGP appeal are not included in the EPA's permit.

Comment #9 (NWEA)

The purported BMPs (considered narrative WQBELs) of a Nitrogen Optimization Plan and Nutrient Reduction Evaluation are not BMPs and are not sufficient to meet the Clean Water Act. Specifically, the Nitrogen Optimization Plan is not an effluent limit because it does not impose any restriction on discharge. The BMPs must be a practice or procedure, and that the Nitrogen Optimization Plan is a “plan for a plan”; the chosen strategy does not require approval by EPA or public comment. The purported BMP will not reduce nitrogen discharges nor even maintain them at current levels, and does not ensure that the discharge will not violate WQS.

EPA's second purported BMP – the Nitrogen Reduction Evaluation – is purely an analysis, not a practice or procedure and is not intended to have any controlling effect on the permittee's discharge of nitrogen to Puget Sound. Accordingly, the Nitrogen Reduction Evaluation is not a BMP and therefore not an effluent limitation, and does not ensure that the permit prevents the permittee from causing or contributing to violations of WQS by its discharge of nitrogen.

Response #9

BMPs are “schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ‘waters of the United States.’ BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage” (40 CFR 122.2). While there is reasonable potential to exceed the DO WQS as discussed in the fact sheet addendum, it is infeasible to establish numeric WQBELs for nitrogen at this time, see Response to Comment #7. 40 CFR 122.44(k) states that BMPs to control or abate the discharge of pollutants may be included in the permit when numeric effluent limitations are infeasible. BMPs are included in the form of the NOP and NRE. The NOP will require the permittee to assess and implement strategies for optimizing the operation of the facility to reduce nitrogen in the effluent. The NRE will require the permittee to assess future practices that will further reduce nutrient discharges and help inform future permits. Therefore, since these requirements will reduce the discharge of nutrients into Puget Sound, they are BMPs as defined in 40 CFR 122.2.

Comment #10 (NWEA)

The proposed permit includes an ambiguous narrative prohibition that may or may not be intended to ensure that the permit complies with the CWA. EPA must answer what specifically it intends by the words “floating, suspended, or submerged matter of any kind in concentrations causing nuisance or objectionable conditions or that may impair designated beneficial uses.” Does this mean any pollutant, such as nitrogen or toxics, or just the sorts of pollutants that are thought of as floating (e.g., “floatables”), suspending (e.g., non-floating plastic garbage) or submerging (e.g., dirt, concrete)?

EPA is required to include a narrative prohibition as a backstop to ensure compliance with applicable WQS in accordance with the CWA and its implementing regulations.

Response #10

This provision is not included among those on which the EPA accepted comments during the second public comment period. However, it should be noted that the EPA has removed this narrative provision from the permit because it was included in the permit as a typographical error. Specifically, this narrative provision comes from Idaho WQS and was erroneously included in this Washington permit. Washington's WQS do not include this language or a comparable one.

Comment #11 (NWEA)

There are many contaminants of emerging concern (CECs) that are likely present in the discharge from domestic WWTPs like Tulalip. EPA has not conducted a reasonable potential analysis for any of these toxic pollutants.

Response #11

The EPA cannot conduct a reasonable potential analysis for CECs without effluent monitoring data specific to the facility and approved criteria for those pollutants. Many of these unregulated contaminants occur at extremely low concentrations, making them difficult to consistently and accurately measure. However, literature suggests that biological secondary treatment and UV disinfection are effective methods to remove loading of CECs, and that advanced nutrient removal techniques have an even higher removal efficiency. Therefore, addressing nutrient in the discharges will also reduce loading of CECs. As discussed above, the facility is required to implement nutrient optimization and consider future nutrient removal options.

Comment #12 (NWEA)

EPA cannot concurrently conclude that there is sufficient rationale for PFAS monitoring in the permit and conclude that there is not a basis for a prohibition on PFAS discharges. The CWA does not create an exclusion from CWA section 301(b)(1)(C) for pollutants for which EPA has not obtained sufficient information on which to base a numeric effluent limit. EPA's proposed monitoring for PFAS chemicals does not comply with the CWA.

Response #12

There are no state WQS for PFAS; therefore, the EPA cannot establish a numeric effluent limit for PFAS. Furthermore, the EPA needs to collect information on PFAS in the discharge before determining whether limits are necessary. Therefore, the EPA has included PFAS monitoring in this permit cycle to collect information regarding the presence of PFAS in the discharge and the amount of PFAS in the discharge in order to better inform the next permit issuance.

Comment #13 (NWEA)

The proposed additions to the draft permit do not ensure the permit complies with AKART, as described in Comment #5 regarding the first draft permit. In addition to the provisions cited therein, EPA's draft permit does not comply with the following: RCW 90.48.010; 90.48.520; 90.54.020; WAC 173-226-070. EPA has not addressed this omission with the proposed plans for plans discussed in Comment #9.

Response #13

The Permit ensures implementation of AKART, as described in Response to Comment #5.

Comment #14 (NWEA)

There is no reopener that would allow EPA to impose more stringent conditions after the permittee gains information from monitoring, specifically those for nitrogen and PFAS. EPA concedes that its effluent limitations may not be sufficient to meet WQS but provides no method by which it will meet the requirements of the CWA and federal regulations. EPA cannot reasonably claim that it will address results of monitoring in the next five-year permit because EPA permits authorizing discharge to Puget Sound are generally outdated, including the Tulalip permit, which was last issued in 2009.

Response #14

The EPA can modify a permit pursuant to 40 CFR 122.62 without including a reopener provision in the permit itself. Causes for modification include, but are not limited to, new information that is gathered during the permit term that warrant a change to the permit and the promulgation of new standards. The monitoring requirements in the permit were developed to provide a robust data set that can be used at the time of permit reissuance. Assuming the permittee submits an application for renewal, the EPA will reissue the permit as soon as possible upon the end of this permit term.

Comment #15 (NWEA)

In April 2022 EPA issued a memo concerning the issuance of NPDES permits to sources where EPA is the pretreatment control authority. The memo recommends that EPA require permittees to update the industrial user (IU) inventory and that IU permits should be updated to include a combination of monitoring, best management practices, local limits if possible, and pollution prevention/substitution/good housekeeping practices.

Neither the original Fact Sheet for the draft [Tulalip] permit nor the one prepared for the second comment period clearly explain what pretreatment program exists for the facility, if any. The original Fact Sheet states that EPA is the pretreatment authority; the new Fact Sheet is silent on what kind of indirect dischargers there are to the [Tulalip] facility, if any, and does not note potential indirect sources of PFAS. The draft NPDES permit requires the permittee—not EPA—to ensure the initial aspects of a working pretreatment program (See Permit Part II.H).

Why, if EPA is the pretreatment authority, does the permit issued to the Permittee include provisions that appear to assume the Permittee is the pretreatment authority? For example, it appears to allow the Permittee to authorize indirect dischargers that do not meet the descriptions of II.H.1 and 2. How does this description of sources that the Permittee is not allowed to authorize ensure that all PFAS sources are covered? There is no reference in II.H.3, pertaining to the master list of “industrial sources,” to be compiled by the Permittee to ensure that sources of PFAS that are not typically identified as industrial sources—including but not limited to industrial sources identified in EPA’s April 28 memo—will be identified. There is no rationale provided for giving the Permittee two years in which to complete the list (see II.H.4), when EPA’s memo recommends one year. How will EPA ensure, since it is the pretreatment authority and not the Permittee, that indirect sources of PFAS do not enter the [Tulalip] facility? That is, through what regulatory mechanism will EPA carry out the pretreatment obligations to ensure that

indirect sources are subject to the provisions recommended by the EPA memo in Part B.3.b.i–iii? The fact sheet provides no information on this or anything else concerning indirect sources of PFAS that may enter this treatment facility. Given that PFAS can only be controlled in sewage effluent by keeping it out of the influent in the first instance, EPA has not taken the steps necessary to ensure that if it determines there are PFAS in the effluent it will have any information on how to control those PFAS levels. Thus it will have failed to meet both the intent and the requirements of the Clean Water Act, its own regulations, and its PFAS guidance. Monitoring PFAS alone will not protect Washington’s water quality.

Response #15

The original permit is not silent on indirect dischargers; it states in Part II.A that the facility serves a resident population of 2,771 and that there are no major industries discharging to the facility. The fact sheet addendum simply provides information supporting the additional conditions added to the permit. It does not reference indirect dischargers because the original fact sheet already states that there are no major industries discharging to the facility and there have been no changes at the facility. The original fact sheet also clearly states in Part VII.F, as the comment notes, that EPA is the pretreatment authority, and thus the facility is subject to the regulations of the national pretreatment program.

Since the EPA is the pretreatment authority, the EPA is also the control authority of industrial users, as stated in the fact sheet. Accordingly, the permit requires the permittee to develop a list of all IUs that may be subject to pretreatment standards and requirements and requires that the list be submitted to the EPA (40 CFR 403.8). The national pretreatment program’s focus is to address industrial sources of pollution that cause interference or pass through; the permit specifies, in Parts II.H.1 and 2, that the permittee may not authorize the introduction of such pollutants. There are currently no WQS for PFAS, and PFAS are not regulated through the national pretreatment program. However, if industrial users (IUs) were added, the EPA would, as the pretreatment authority, require BMPs for those IUs with the potential to discharge PFAS. If interference were to occur due to PFAS or other pollutants, the EPA would work with the facility and IU to investigate the cause of the interference and remedy it.

If the permittee were to introduce new toxic pollutants or make other significant changes during the permit term, they would be required to notify the EPA (Permit Parts III.K, IV.I, 40 CFR 122.41(l)(1)). Effluent PFAS monitoring is required in the permit as recommended in EPA’s *Addressing PFAS Discharges in National Pollutant Discharge Elimination System (NPDES) Permits and Through the Pretreatment Program and Monitoring Programs* (PFAS guidance memo). This monitoring information will help indicate whether such hypothetical industrial users are sources of PFAS. As indicated in the PFAS guidance memo, addressing PFAS from industrial and other sources is an EPA priority. The new monitoring will inform future permitting decisions and potential future rulemaking to support technology-based and water quality-based effluent limitations for PFAS.

The commenter is correct that the PFAS guidance memo suggests the IU list be completed within one year while the draft permit specified two years. The EPA has changed the deadline for this requirement to one year from the effective date in Part II.H.4 of the final permit.

Comment #16 (NWEA)

The permit can employ a compliance schedule to meet the requirements of the Clean Water Act on an accessible time scale. As the permitting authority, EPA cannot evade its legal obligation to set effluent limitations for nutrients or forever chemicals. It may lessen the technical and financial burden on

permittees by using a compliance schedule. The Clean Water Act does not authorize EPA to decline to set effluent limits for reasons of complexity or cost, nor to allow permittees to remove from consideration options for meeting WQS purely for reason of cost.

In addition to writing a compliance schedule into the permit, EPA might facilitate effective and legally required improvements to this WWTP by collaborating with the permittee on securing funding for updates. While it is unjust for EPA's tribal permittees to bear burdens of reduction that Ecology's municipal permittees are not yet asked to, it is illegal for either agency to fail to set effluent limits on nitrogen discharges into Puget Sound. EPA might fulfill its obligations under the Act and support its permittees at the same time by participating in efforts to secure grant funding for improvements to WWTPs, such as through programs run by the USDA.

EPA notes that it removed language describing compliance schedules because this draft permit does not employ one (Fact Sheet Addendum pg. 6). EPA should, though, consider the utility of a compliance schedule under these circumstances. The Puget Sound faces known impairments to which wastewater dischargers, such as this one, are contributing. The WWTP must continue its essential operations, but must also make progress toward reducing nitrogen discharges based on limits which EPA is legally required to set.

Response #16

NWEA is correct that EPA can employ compliance schedules to give a permittee time to meet a new WQBEL. However, as discussed in Responses to Comments 3, 7, 9, and 12, the EPA has insufficient information to establish numeric limits for nutrients or PFAS. Monitoring data from this permit will help inform the next permit when it is reissued.

Other Minor Changes including Typographical Corrections

- The EPA has removed the narrative limitations set forth in Part I.B from the final permit.
- The EPA's December 2022 memo, *Addressing PFAS Discharges in National Pollutant Discharge Elimination System (NPDES) Permits and Through the Pretreatment Program and Monitoring Programs* suggests that an industrial user list be completed within one year of the permit effective date. The draft permit incorrectly specified two years, pointed out in a comment on the Gooseberry Point WWTP Permit. The EPA has changed the deadline for this requirement to one year from the effective date in Part II.G.4 of the final permit.
- The EPA clarified that Nitrogen Reduction Evaluation requirements may be waived if the permittee meets 10 mg/L average annual TIN and doesn't document an increase in load.
- Monitoring frequency for enterococci bacteria in Table 1 was reduced from weekly to monthly, in keeping with changes to the Sandy Point and Gooseberry Point WWTP permits.
- The EPA updated the link to Ecology's publication No. 04-10-020, Information Manual for Treatment Plant Operators, in Table 1, footnote 3.
- The EPA added footnote 4 and amended footnote numbering in Table 1.
- The EPA specified that the permittee must use Final EPA Method 1633 for PFAS chemicals in Part I.B.8.
- The EPA corrected the phone numbers for Ecology's Northwest Regional Office and Snohomish Health District outside of working hours in Part III.H.1.
- The EPA updated penalty amounts in Part IV.B.

- The EPA updated the permit to require electronic reporting in most cases.
- The EPA corrected additional typos, punctuation, and formatting errors.
- The EPA does not update fact sheets, but acknowledges several errors in the original fact sheet:
 - Page 12, footnote: The correct link is <https://apps.ecology.wa.gov/waterqualityatlas/wqa/map>.
 - Page 15, Table 6, footnote 3: The correct link is <https://apps.ecology.wa.gov/publications/documents/0410020.pdf>.
 - Page 23: The phone number for Ecology's Northwest Regional Office is (206) 594-0000.
 - Page 25 (Part V.A): The third paragraph is a duplicate of the second paragraph and can be struck.