

Nitrogen/Wastewater Treatment Plant: U.S. EPA Environmental Appeals Board Petition Filed Challenging Washington NPDES Permit



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The Northwest Environmental Advocates (“NWEA”) filed a September 7th Petition for Review (“Petition”) before the United States Environmental Protection Agency (“EPA”) Environmental Appeals Board challenging a Clean Water Act National Pollutants Discharge Elimination System (“NPDES”) Permit issued to the Tulalip Tribes of Washington (“TTW”).

The NPDES Permit issued to TTW addresses a wastewater treatment plant (“WWTP”) that discharges to the Puget Sound in the State of Washington.

The NPDES Permit was issued by EPA Region 10 on August 8, 2024. The WWTP is described as a minor plant using a:

...conventional activated sludge treatment process that meets the Clean Water Act’s “secondary treatment” standard.

The Petition states that similar to other municipal WWTPs, the effluent contains the nutrients nitrogen and phosphorus.

The Petition states by way of background:

- Puget Sound is experiencing eutrophication.
- Washington Department of Ecology (“WDE”) has found that wastewater discharge from sewage treatment plants like the one subject to the Petition is negatively impacting water quality in Puget Sound.
- Puget Sound is on the State of Washington’s list for impaired waters for dissolved oxygen (“DO”) without a total maximum daily load (“TMDL”) for DO.
- The size and extent of Puget Sound’s DO impairment is expected to worsen in the years ahead due to population growth, climate change, and other causes.
- WDE has found that all WWTPs that discharge into Puget Sound have a reasonable potential to contribute to the DO impairment.
- EPA Region 10 did not include an effluent limit that would significantly reduce the amount of nitrogen discharged, instead including what is described in the Petition as “vague narrative conditions” relating to “nitrogen optimization” and future planning in lieu of a numeric nitrogen limitation.

The Petition challenges EPA Region 10’s NPDES Permit nitrogen language arguing:

- The Board should review the documents filed with NWEA's Petition and consider them as part of the administrative record for the Tulalip Permit.
- The Region committed clear error by failing to include a numeric nitrogen WQBEL in the Tulalip Permit.
- The Region may only issue NPDES permits if they contain limitations and other conditions that are sufficient to ensure compliance with applicable water quality standards.
- The Region correctly found that the Tulalip WWTP's nitrogen discharges contribute to exceedances of the DO water quality standard in Puget Sound, triggering the obligation to include a nitrogen WQBEL under 40 C.F.R. § 122.44(d)(1).
- The Region did not make a sufficiently adequate finding on the record as to the feasibility of a numeric nitrogen WQBEL for the Tulalip WWTP.
- The Region's cursory reasons for why a numeric nitrogen WQBEL is infeasible for the Tulalip WWTP are inconsistent with EPA regulations and are not supported by the record.
- This Board has upheld EPA's inclusion of numeric nutrient WQBELs in permits issued to municipal WWTPs even where data are imperfect and no TMDL exists.
- The conditions included in the Tulalip Permit in lieu of a numeric nitrogen WQBEL fail to ensure compliance with water quality standards as required by 40 C.F.R. § 122.44(d)(1).

A copy of the Petition can be downloaded [here](#).