

NORTHWEST ENVIRONMENTAL ADVOCATES



October 4, 2019

Stephanie Solien and Les Purce, Co-Chairs
Southern Resident Killer Whale Recovery and Task Force
c/o Office of the Governor
P.O. Box 40002
Olympia, WA 98504 *Via upload only:* <https://www.surveymonkey.com/r/srkwtffpubliccomment>

Re: **Southern Resident Orca Task Force: *Potential New Recommendations***

Dear Ms. Solien and Mr. Purce:

Northwest Environmental Advocates (NWEA) writes to comment on the potential new recommendations to be discussed at the task force's upcoming meeting as outlined in the document entitled draft Southern Resident Orca Task Force: Potential New Recommendations (undated) made available for one single day of public comment. Our comment is this: **don't make hollow and misleading recommendations.**

One of the proposed new recommendation pertains to nutrients:

Recommendation YR2-D: Develop a NPDES permit framework for wastewater treatment in Puget Sound

Recommendation YR2-E: Better align existing nonpoint programs with nutrient reduction activities and explore new ways to achieve the necessary nonpoint source nutrient reductions.

Recommendation YR2-F: Collect high-quality, nutrient data in watersheds to fill key knowledge gaps of baseline conditions.

When we commented in October 2018, we strongly urged the Task Force to address nutrient pollution in Puget Sound, bearing in mind that removing nutrients from sewage also reduces regulated and unregulated (e.g., pharmaceuticals and personal care products) contaminants. Now the Task Force proposes to address this topic in a manner that is utterly without substance for the following reasons:

- The Washington Department of Ecology *already claims* that it is developing an “NPDES permit framework.”

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- Ecology *does not actually have a nonpoint source pollution program* to “better align” with its nonexistent “nutrient reduction activities.”
- Ecology is *already* collecting more data on nutrients in watersheds.

Worse than adding absolutely nothing to the discussion, the Task Force’s proposed recommendations actively promote the false impression that Ecology has or will soon have either a point or nonpoint source control program for nutrients in Puget Sound. Instead, consider this: On January 11, 2019, in denying NWEA’s petition for rulemaking for technology-based controls of nutrients at sewage treatment plants, Ecology claimed that by mid-2019 it would be using “the individual permitting process” to: (1) establish nutrient loading limits at current levels; (2) require planning efforts by permittees; and (3) reflect nutrient removal capacity in the handful of plants that have it. *See* Letter from Maia Bellon, Ecology, to Nina Bell, NWEA, Re: Petition for Rulemaking to Adopt a Presumptive Definition of “All Known, Available, and Reasonable Treatment” as Tertiary Treatment for Municipal Sewage Dischargers to Puget Sound and its Tributaries (Jan. 11, 2019) . Today, Ecology has a comment period open for the Skagit County Sewer District No. 2 (Big Lake Wastewater Treatment Plant), NPDES Permit No. WA0030597, in which there is no “cap” on nutrients at current limits, no requirement for near- or long-term planning, and no nitrogen limit to reflect the fact that this facility has nitrogen removal capacity. In other words, Ecology’s commitment to an NPDES permit framework is worth nothing. In addition, Ecology is currently taking public comments on a proposed determination to issue an NPDES general permit that it has made clear will not comply with Clean Water Act requirements to limit nutrient pollution sufficient to meet water quality standards.

As for nonpoint sources, before the Task Force opines on Ecology’s purported “existing nonpoint programs with nutrient reduction activities” it should first look to see if there is one. The only substantial nonpoint control activity carried out by Ecology is providing funding to land owners and that does not a “program” make.

Finally, we attach our previous comments in the hope that they shed some light on why the Task Force should not continue to defer to the Department of Ecology on this issue.

Sincerely,



Nina Bell
Executive Director

Attachment: Letter from Nina Bell, NWEA, to Southern Resident Killer Whale Recovery Task Force, Re: October 24 DRAFT Orca Task Force Recommendations (Oct. 29, 2019)

NORTHWEST ENVIRONMENTAL ADVOCATES



October 29, 2018

Stephanie Solien and Thomas Purce, Co-Chairs
Southern Resident Killer Whale Recovery and Task Force
c/o Office of the Governor
P.O. Box 40002
Olympia, WA 98504 *Via upload only:* <https://www.surveymonkey.com/r/srkwtfpubliccomment>

Re: **October 24 DRAFT Orca Task Force Recommendations**

Dear Ms. Solien and Mr. Purce:

We are writing to address some of the Orca Task Force's evident misconceptions about programs operated by the Department of Ecology pursuant to the federal Clean Water Act and Washington law that are reflected in its recommendations to implement Goal No. 3, "Reduce the exposure of Southern Resident orcas and their prey to contaminants." *October 24 DRAFT Orca Task Force Recommendations* at 23. These misconceptions undermine the value of the recommendations the task force proposes to make to improve both the treatment of municipal sewage discharges and the Washington Department of Ecology's National Pollutant Discharge Elimination System (NPDES) permitting program.

Together, Recommendation No. 30—"Identify, prioritize and take action on chemicals that impact orcas and their prey"—and Recommendation No. 32—"Improve effectiveness, implementation and enforcement of National Pollutant Discharge Elimination System (NPDES) permits to address direct threats to Southern Resident orcas and their prey"—mischaracterize Ecology's use of, and potential to use, the National Pollutant Discharge Elimination System (NPDES) program for controlling pollution from municipal sewage treatment plants. The problematic suggestions in these recommendations can be summarized as follows:

- The task force is postponing looking at "nutrient loading/water quality" until Year 2. *Id.* at 23.
- The task force suggests that implementing "enhanced treatment" to reduce loading of chemicals of emerging concern ("CEC") requires legislative and/or budget requests. *Id.* at 24.
- The task force urges that Ecology "convene discussions about pharmaceuticals, source control and wastewater treatment options" to develop a plan to decrease loading of priority CECs by 2025. *Id.*

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- The task force suggests that Ecology “accelerate effectiveness, implementation, and enforcement” of NPDES permits and “conduct more robust inspections, assistance programs and enforcement . . . to increase enforcement against entities that exceed limits for pollutants known to cause harm to the Southern Resident orcas and their prey.” *Id.* at 27.
- The task force says Ecology “should update aquatic life water quality standards focused on pollutants most harmful to Southern Resident orcas and their prey. . . . primarily focus[ed] on PBDEs, CECs and other chemicals[.]” *Id.*
- The task force states that “[i]mproved permit requirements [from updated standards] would also result in increased innovation and source control for permitted dischargers and drive improved technology requirements under the existing ‘best available technology’ standard. For municipal wastewater facilities this would [include] . . . deployment of improved treatment technologies with already planned or required upgrades to wastewater treatment facilities.” *Id.*

Taking these statements and recommendations together, here is what the task force is missing:

- The task force appears to misunderstand the AKART requirement. The task force reference to “the existing ‘best available technology’ standard” means the 73-year old Washington law called “AKART” that requires the use of “all known, available, and reasonable methods of treatment.” The task force confuses AKART’s *technology-based approach* with a *water quality-based approach* in which updated water quality standards can “drive” the development of new treatment technology. AKART, however, is independent of water quality and water quality standards.¹ Moreover, eight years ago Ecology demonstrated the widespread existence of advanced treatment technology²; there is no need to “drive” the development of this technology with updated water quality standards. What is needed is for Ecology to implement AKART as required by state law.
- Advanced treatment technology to remove nutrients from municipal sewage discharges already exists and is in widespread use yet nutrient pollution is the very parameter the task force has chosen to postpone. The Washington Pollution Control Board (PCHB) has already determined that advanced treatment to remove nutrient pollution and PCBs is AKART.³ There is no rationale for further delay by Ecology.
- Few municipalities are planning to upgrade their treatment processes because Ecology

¹ RCW 90.52.040; *see also* Washington Attorney General Opinion, AGO 1983 No. 23, at 13.

² Ecology, *Technical and Economic Evaluation of Nitrogen and Phosphorous Removal at Municipal Wastewater Treatment Facilities* (June 2011).

³ *Sierra Club v. Washington*, PCHB No. 11-184, Findings of Fact, Conclusions of Law and Order (July 19, 2013) at 25.

- does not require AKART and, with few exceptions, does not establish water quality-based effluent limits for nutrient pollution in municipal discharges. No effluent limits have been established to protect the waters of Puget Sound as a whole.
- Advanced treatment has been proven to remove toxics. Eight years ago, Ecology and the U.S. Environmental Protection Agency (EPA) demonstrated that advanced treatment to remove nutrient pollution also significantly reduces a wide range of both regulated and currently unregulated pollutants, such as CECs.⁴
 - It is not possible to better inspect and enforce permit limitations that do not exist. As of February 2017, of the municipal dischargers to Puget Sound and its tributaries with permits issued by Ecology, only a handful had effluent limits for toxics (other than chlorine and ammonia): one had an effluent limitation for lead and five had effluent limitations for copper.⁵ Of these, only one discharges to Puget Sound (LOTT). Ecology consistently avoids establishing toxic limits for Puget Sound dischargers by using regulatory mixing zones about which the task force has said nothing.⁶
 - Ecology resists updating its water quality standards for aquatic life. In 2013, NWEA petitioned EPA to update Washington's aquatic life criteria, yet neither EPA nor Ecology has done so.⁷
 - The timeframe for establishing water quality standards for currently unregulated toxics such as PBDEs will be long. Few states have the resources to engage in the development of water quality standards without EPA's first having established recommended criteria. It is unlikely that Ecology would engage in the scientific process of developing such standards on its own and if it were to do so, the process would be lengthy.
 - The task force's recommendation will result in further Ecology delay. The task force recommends that Ecology take a full six years to develop a plan to decrease loading of priority CECs, six years before it begins to take any actions, disregarding the length of time needed to plan, finance, and construct municipal and industrial upgrades that would actually reduce pollution.

For many years, NWEA has been at the forefront of seeking to improve Washington's water quality standards, 303(d) listing, Total Maximum Daily Load (TMDL), and pollution control

⁴ Ecology, *Control of Toxic Chemicals in Puget Sound Phase 3: Pharmaceuticals and Personal Care Products in Municipal Wastewater and Their Removal by Nutrient Treatment Technologies* (Jan. 2010).

⁵ Two of these six outfalls are for emergencies only.

⁶ Northwest Environmental Advocates, *Petition for Corrective Action or Withdrawal of Authorization from the State of Washington to Issue National Pollutant Discharge Elimination System Permits* (Feb. 13, 2017) at 97 – 100.

⁷ Northwest Environmental Advocates, *Petition for Rulemaking Under the Clean Water Act: Water Quality Criteria for Toxics in the State of Washington* (Oct. 28, 2013).

programs because we believe strongly in the use of the water quality-based approach to restricting pollution of Washington's waters. Yet it is important to not confuse this water quality-based approach with Washington's AKART technology-based mandate, which both is a stand-alone legal requirement and requires the implementation of the much-needed treatment upgrades at our sewage treatment plants. And it is equally important to recognize that the NPDES permitting program will not become stronger and thereby serve to protect orca whales and the food web that supports them merely because the Department of Ecology might adopt new aquatic life water quality standards. The methods that Ecology has used for so long to largely avoid establishing water quality-based effluent limitations in its NPDES permits will undermine that effort if the agency is not also required to reform other aspects of its permitting program.

As we understand the charge of the task force, it is to move quickly. That aim is not reflected in the recommendations as they have been drafted. Although the goals of the recommendations to improve the NPDES permitting program in Washington are laudable, in our opinion, the draft recommendations on the subject of water quality will do little or nothing to improve on the status quo of Ecology permitting that is inconsistent with the law and fails to protect the environment.

Sincerely,

A handwritten signature in black ink, appearing to read "Nina Bell". The signature is fluid and cursive, with a large initial "N" and a long, sweeping underline.

Nina Bell
Executive Director