

**POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON**

PUGET SOUNDKEEPER ALLIANCE,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY, and  
KING COUNTY,

Respondents,

and

CITY OF TACOMA.

Respondent-Intervenor

PCHB No. 24-029

ORDER ON MOTIONS

**I. INTRODUCTION**

Puget Soundkeeper Alliance (PSA), filed an appeal with the Pollution Control Hearings Board (Board) on May 28, 2024, challenging the West Point Wastewater Treatment Plant (West Point) and Combined Sewer Overflows Permit No. WA0029181 (West Point Permit), a National Pollutant Discharge Elimination System (NPDES) and State Waste Discharge Individual Permit, issued by the State of Washington, Department of Ecology (Ecology) on April 29, 2024.

The Board grants Appellant's motion for summary judgment on Legal Issue 13, invalidates the West Point Permit to the extent it is inconsistent with state and federal law, and remands the permit to Ecology for further action consistent with the law and this decision. Because the Board considers Legal Issue 13 dispositive in this case, it does not reach legal issues 1, 3, and 4. The

1 Board denies Respondents' motion to dismiss or alternatively continue proceedings and  
2 Appellant's motion to set a trial schedule.

3 The Board deciding this matter was comprised of Chair Michelle Gonzalez, Member  
4 Christopher G. Swanson, and Member Gabriel E. Verdugo. Administrative Appeals Judge Neil L.  
5 Wise presided for the Board. Attorneys Janette K. Brimmer and Alexis Andiman appeared on  
6 behalf of PSA. Assistant Attorneys General Adam L. Levitan and Sonia Wolfman appeared on  
7 behalf of Ecology. Attorney James A. Tupper, Jr., appeared on behalf of the City of Tacoma  
8 (Tacoma). Attorneys Beth S. Ginsberg, Wade C. Foster, and Senior Deputy Prosecuting Attorney  
9 Verna P. Bromley represented King County.

10 In ruling on the motions, the Board considered the following materials:

- 11 1. [Appellant's] Notice of Appeal (*Notice of Appeal*);
- 12 2. King County's Motion to Dismiss or Alternatively Continue Proceedings (*King Cnty's*  
13 *Mot.*);
- 14 3. Declaration of Beth Ginsberg in Support of King County's Motion to Dismiss or  
15 Alternatively Stay Proceedings, with Exs. A-G (*Ginsberg Decl.*);
- 16 4. Respondent State of Washington, Department of Ecology's Response in Support of  
17 King County's Motion to Dismiss or Alternatively Continue Proceedings (*Ecology's*  
18 *Resp.*);
- 19 5. Appellant's Combined Memorandum in Support of Partial Summary Judgment in  
20 Opposition to King County's Motion to Dismiss or Stay (*Appellant's Mot.*);
- 21 6. Declaration of Amy Wells (*Wells Decl.*);

- 1        7. Declaration of Anna Bachmann (*Bachmann Decl.*);
- 2        8. Declaration of Janette K. Brimmer in Support of Appellant’s Combined Memorandum
- 3            in Support of Partial Summary Judgment in Opposition to King County’s Motion to
- 4            Dismiss or Stay, with Exs. A-D (*Brimmer Decl.*);
- 5        9. King County’s Reply in Support of Motion to Dismiss/Stay and Opposition to
- 6            Plaintiff’s Motion for Partial Summary Judgment (*King Cnty’s Reply*);
- 7        10. Second Declaration of Beth S. Ginsberg in Opposition to Soundkeeper’s Motion for
- 8            Partial Summary Judgment, with Exs. 1-4 (*Second Ginsberg Decl.*);
- 9        11. Respondent State of Washington, Department of Ecology’s Joinder in King County’s
- 10            Reply in Support of Motion to Dismiss or Stay, and Response in Opposition to Puget
- 11            Soundkeeper Alliance’s Motion for Partial Summary Judgment (*Ecology’s Joinder*);
- 12        12. Declaration of Adam L. Levitan in Support of Ecology’s Joinder and Response in
- 13            Opposition (*Levitan Decl.*);
- 14        13. Surreply in Opposition to Motion to Dismiss and Stay (*Surreply*);
- 15        14. Appellant’s Reply in Support of Partial Summary Judgment (*Appellant’s Reply*);
- 16        15. Second Declaration of Janette Brimmer in Support of Surreply in Opposition to Motion
- 17            to Dismiss or Stay, with Ex. 1 (*Second Brimmer Decl.*);
- 18        16. King County’s Opposition and Response to Motion for Leave and File Surreply
- 19            (*Surreply Resp.*);
- 20        17. [PSA’s] Motion for Trial Schedule (*Mot. for Trial Schedule*);
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- 1 18. King County's Response in Opposition to Motion for Trial Schedule and Renewed  
2 Motion to Dismiss (*King Cnty's Resp. and Renewed Mot.*);
- 3 19. City of Tacoma's Joinder to King County's Response in Opposition to Motion for Trial  
4 Schedule and Renewed Motion to Dismiss (*Tacoma's Joinder*);
- 5 20. Department of Ecology's Opposition to Motion for Trial Schedule and Motion to  
6 Dismiss or Stay (*Ecology's Opp'n Mot. for Trial Schedule and Mot. to Dismiss or*  
7 *Stay*);
- 8 21. [PSA's] Reply in Support of Motion for Trial Schedule (*Reply to Mot. for Trial*  
9 *Schedule*);
- 10 22. [PSA's] Response in Opposition to Motion to Stay (*Resp. to Mot. to Stay*);
- 11 23. King County and the City of Tacoma's Joint Response to Ecology's Motion to Dismiss  
12 or Alternatively Stay (*King Cnty. and Tacoma's Joint Resp.*);
- 13 24. [PSA's] Opposition to King County's Motion to Dismiss (*Opp'n to Mot. to Dismiss*);
- 14 25. Department of Ecology's Reply in Support of Motion to Stay (*Ecology's Reply to Mot.*  
15 *to Stay*);
- 16 26. Opposition to the Department of Ecology's Motion to Dismiss (*Opp'n to Ecology's*  
17 *Mot. to Dismiss*);
- 18 27. Department of Ecology's Reply in Support of Motion to Dismiss (*Ecology's Reply to*  
19 *Mot. to Dismiss*); and
- 20 28. The Board's file in this matter.
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1 Based on the written arguments and evidence before the Board on the motions, the Board  
2 enters the following decision.

## 3 II. BACKGROUND

### 4 A. Clean Water Act

5 The Clean Water Act's (CWA) purpose is to "restore and maintain the chemical, physical,  
6 and biological integrity of the Nation's waters" and to achieve or maintain "water quality which  
7 provides for the protection and propagation of fish, shellfish, and wildlife." 33 U.S.C. § 1251(a)(2);  
8 *Puget Soundkeeper All. v. Pollution Control Hr'gs Bd.*, 189 Wn. App. 127, 137, 356 P.3d 753  
9 (2015). The Water Pollution Control Act, chapter 90.48 RCW, is the state statute that similarly  
10 protects and regulates waters within Washington state.

11 The CWA prohibits the discharge of pollutants from a point source absent an NPDES  
12 permit. *Puget Soundkeeper All. v. Dep't of Ecology*, 191 Wn.2d 631, 637-38, 424 P.3d 1173 (2018)  
13 (citing 33 U.S.C. § 1251(a), 1311(a), 1342(a)). Congress authorized the Environmental Protection  
14 Agency (EPA) to delegate the NPDES permitting program to the states. 33 U.S.C. § 1342(b). State  
15 NPDES permit programs must "at all times be in accordance with" the CWA and EPA's NPDES  
16 regulations. 33 U.S.C. § 1342(c)(2); *see also* 33 U.S.C. §§ 1314(i)(2), 1342(b), 40 C.F.R. Ch. I,  
17 Subch. D, Pt. 123. In Washington, the Legislature delegated this permitting authority to Ecology.  
18 RCW 90.48.260(1). EPA approved Washington's state discharge permit program under chapter  
19 90.48 RCW. NPDES permits issued by Ecology pursuant to the authority delegated by EPA under  
20 the CWA are also designed to satisfy the requirements for State Waste Discharge permits pursuant  
21 to chapter 90.48 RCW. *See* WAC 173-220-010.

1 NPDES permits are required to include effluent limits to ensure compliance with two  
2 independent requirements: (1) technology-based limits; and (2) water quality-based limits.  
3 33 U.S.C. § 1311(b)(1)(A)-(C). For municipal Wastewater Treatment Plants (WWTPs), the CWA  
4 requires technology-based limits that meet secondary treatment requirements. 33 U.S.C.  
5 § 1311(b)(1)(B). EPA regulations define secondary treatment to regulate only three of the  
6 pollutants discharged by municipalities. 40 C.F.R. § 133.102 (regulating biological oxygen  
7 demand, suspended solids, and pH). Discharges by WWTPs are required to be treated “with all  
8 known, available, and reasonable methods of treatment prior to their discharge or entry into waters  
9 of the state.” RCW 90.52.040, 90.54.020(3)(b). This is referred to as Washington’s AKART  
10 requirement, which is defined as “the most current methodology that can be reasonably required  
11 for preventing, controlling, or abating pollutants associated with a discharge.”  
12 WAC 173-201A-020.

13 The CWA defines water quality-based limits as “any more stringent limitation . . .  
14 necessary to meet water quality standards . . . .” 33 U.S.C. § 1311(b)(1)(C). States adopt water  
15 quality standards, which are subject to EPA’s review and approval. 33 U.S.C. § 1313(c). Water  
16 quality standards define the water quality goals of a waterbody by designating the waterbody’s use  
17 and setting criteria to protect those designated uses. 40 C.F.R. § 131.2. Washington adopted, and  
18 EPA approved, water quality standards for dissolved oxygen at levels necessary to protect aquatic  
19 life as a designated use of the state’s waters. WAC 173-201A-210(1)(d). These water quality-based  
20 limits need not be numeric; NPDES permits may include narrative effluent limits, known as best  
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1 management practices, to control or abate the discharge of pollutants upon a showing that  
2 calculating a numeric effluent limit is infeasible. 40 C.F.R. § 122.44(k)(3).

### 3 **B. Discharge Permits**

4 Ecology regulations prohibit the discharge of pollutants to waters of the state from any  
5 point source “except as authorized by an individual permit issued pursuant to chapters 173-216  
6 [which governs state-law permits] and 173-220 WAC [which governs NPDES permits], or as  
7 authorized through coverage under a general permit issued pursuant to [chapters 173-226 WAC].”  
8 WAC 173-226-020.

9 An individual permit is a permit for a single point source or a single facility.  
10 WAC 173-220-030(12). Ecology’s regulations define a “general permit” as a permit that “covers  
11 multiple dischargers of a point source category within a designated geographical area, in lieu of  
12 individual permits being issued to each discharger.” WAC 173-226-030(13); WAC 173-220-  
13 030(11). Ecology issues and administers general permits in accordance with state and federal  
14 regulations. 40 C.F.R. §§ 122.28, 123.25(a)(11). EPA regulations provide for the issuance of a  
15 general permit “written to cover one or more categories or subcategories of discharges . . . except  
16 those covered by individual permits, within a geographic area.” 40 C.F.R. § 122.28(a)(1).

### 17 **C. Excess Nutrient Pollution in Puget Sound**

18 Nutrient pollution in the Puget Sound leads to excessive growth of algae that consumes  
19 oxygen as it decomposes, resulting in reduced dissolved oxygen levels, which in turn threaten  
20 aquatic life. *Ginsberg Decl., Ex. G, pp. 25-26, 72 (General Permit Fact Sheet)*. Low dissolved  
21 oxygen levels have been observed throughout the Puget Sound; Ecology has determined that

1 municipal wastewater discharges are a significant cause of this problem. *Ginsberg Decl.* ¶ 6, *Ex.*  
2 *E*, pp. 73, 81-82 (*West Point Permit Fact Sheet*). King County’s West Point is one of the largest  
3 sources of nutrient pollution in the Puget Sound. *Ginsberg Decl.* ¶ 7, *Ex. F*, pp. 7-8 (*General*  
4 *Permit*).

#### 5 **D. Puget Sound Nutrient General Permit**

6 To address the nutrient pollution from WWTPs leading to dissolved oxygen levels in Puget  
7 Sound, Ecology issued the Puget Sound Nutrient General Permit (PSNGP) on December 1, 2021,  
8 which became effective on January 1, 2022. *Ginsberg Decl.* ¶ 7, *Ex. F*, p. 1. The PSNGP is a joint  
9 NPDES permit issued pursuant to the CWA and chapter 90.48 RCW. *Ginsberg Decl.* ¶ 7, *Ex. F*,  
10 p. 1.

11 The PSNGP regulates discharges of nutrients into Puget Sound from 58 WWTPs in  
12 Washington. *Ginsberg Decl.* ¶ 8, *Ex. G*, pp. 9, 12-16. The PSNGP includes narrative water quality-  
13 based effluent limitations for nutrient pollution, also known as total inorganic nitrogen (TIN),  
14 which is the aggregate of ammonia, nitrate, and nitrite. *Ginsberg Decl.* ¶ 8, *Ex. G*, p. 75. Ecology  
15 did not include numeric water quality-based effluent limits for TIN because it was infeasible to  
16 calculate such limits given the status of the requisite modeling work. *Ginsberg Decl.* ¶ 8, *Ex. G*,  
17 pp. 32-33.

18 The 58 dischargers covered by the PSNGP are divided into three categories—dominant,  
19 moderate, and small loaders—based on Ecology’s calculation of each WWTP’s percentage of TIN  
20 discharged to Puget Sound annually. *Ginsberg Decl.* ¶ 7, *Ex. F*, p. 7 (*Table 3*). West Point is  
21 categorized as a dominant loader. *Ginsberg Decl.* ¶ 7, *Ex. F*, p. 12 (*Table 5*). Under the PSNGP,

1 dominant loaders are required to keep their TIN discharges below historical levels, monitor their  
2 influent and effluent, develop and implement a nutrient optimization plan to maximize nutrient  
3 removal by their existing treatment facility, and perform a nutrient reduction evaluation by  
4 December 31, 2025. *Ginsberg Decl.* ¶ 7, *Ex. F*, pp. 11-18, 32-34.

5 For all but one of the PSNGP permittees, Ecology determined that AKART for TIN  
6 discharges during the initial permit cycle was Washington’s discharge standards and effluent  
7 limitations enumerated in WAC 173-221. *Ginsberg Decl.* ¶ 8, *Ex. G*, pp. 18-19; *Second Ginsberg*  
8 *Decl.* ¶ 5, *Ex. 4*, pp. 21-22 (*General Permit Response to Comments*). During the initial permit  
9 cycle, PSNGP permittees are required to complete nutrient reduction evaluations that include an  
10 analysis of AKART to evaluate the greatest reasonable annual TIN reduction. *Ginsberg Decl.* ¶ 7,  
11 *Ex. F*, pp. 16-18. Ecology intends to use the dischargers’ AKART analyses to determine what  
12 constitutes AKART for PSNGP permittees’ TIN discharges in future PSNGP cycles. *Second*  
13 *Ginsberg Decl.* ¶ 5, *Ex. 4*, pp. 25-26.

#### 14 **E. West Point Treatment Plant’s Individual NPDES Permit**

15 On April 29, 2024, Ecology issued the West Point Permit. *Ginsberg Decl.* ¶ 5, *Ex. D*, p. 1  
16 (*West Point Permit*). The West Point Permit does not contain effluent limits for TIN and instead  
17 relies on the PSNGP to regulate nutrient discharges from the facility. *Ginsberg Decl.* ¶ 6, *Ex. E*,  
18 pp. 81-82. Ecology issued the West Point Permit with the intent to regulate nutrient pollution from  
19 West Point through the PSNGP. *Id.*

1                   **F. Procedural History**

2                   On December 1, 2021, Ecology issued the PSNGP, which became effective on January 1,  
3 2022, and expires on December 31, 2026. *Ginsberg Decl.* ¶ 7, *Ex. F, p. 1*. In December 2021, PSA  
4 filed an appeal of the PSNGP, which was consolidated with other appeals of the PSNGP filed by  
5 parties including King County and Tacoma under the caption PCHB No. 21-082c. *Puget*  
6 *Soundkeeper All. v. Dep’t of Ecology*, PCHB No. 21-082c, pp. 1-2 (Jan. 7, 2022, Order of  
7 Consolidation). While the appeal was pending, Ecology agreed to stay five General Permit  
8 provisions. *Ginsberg Decl.* ¶ 9, *Ex. H, pp. 2-3 (Am. Stipulation for Partial Stay of General Permit)*.  
9 A subset of the appellants—not including PSA—filed a motion for partial summary judgment on  
10 three threshold issues, including whether Ecology could regulate nutrients discharged by WWTPs  
11 to Puget Sound through the PSNGP while regulating the discharge of all other pollutants by those  
12 facilities through individual permits. *Puget Soundkeeper All. v. Dep’t of Ecology*, PCHB No. 21-  
13 082c, pp. 9-10 (Feb. 28, 2025, Order Granting Permittees’ Joint Motion for Partial Summ. J. on  
14 Threshold Issues).

15                  On February 28, 2025, the Board issued an order granting appellants’ Joint Motion for  
16 Partial Summary Judgment, invalidating the PSNGP insofar as it was mandatory for dischargers  
17 with individual permits, and remanding the permit to Ecology for further actions consistent with  
18 the law and the Board’s decision. *Id.*, *p. 31*. Specifically, the Board concluded that Ecology did  
19 not have authority to use general permits as a mechanism to layer new regulatory requirements on  
20 top of existing individual permits but could issue a voluntary or “opt-in” general permit to regulate  
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1 nutrient discharges or modify existing individual permits within modification parameters to  
2 regulate nutrient discharges. *Id.*, p. 30. The parties did not appeal the Board's order.

3 On May 28, 2024, PSA filed this appeal challenging the West Point Permit. *Notice of*  
4 *Appeal*, p. 2. Thereafter, King County filed, and Ecology joined, a motion to dismiss this appeal  
5 or alternatively continue proceedings, which PSA opposed. *King Cnty's Mot.; Ecology's Joinder*.  
6 PSA filed a motion for summary judgment on Legal Issues 1, 3, 4, and 13, which King County  
7 and Ecology opposed. *Appellant's Mot.; King Cnty's Reply; Ecology's Joinder*. This case was then  
8 stayed pending the Board's decision in PCHB No. 21-082c (hereinafter, the PSNGP appeal) and  
9 resumed after the Board issued the order granting the permittees' motion for partial summary  
10 judgment.<sup>1</sup> Following the issuance of that decision, PSA filed a motion to set a trial schedule and  
11 rule on its prior summary judgment motion, which Respondents opposed. *Mot. for Trial Schedule;*  
12 *King Cnty's Resp. and Renewed Mot.; Tacoma's Joinder; Ecology's Opp'n to Mot. for Trial*  
13 *Schedule and Mot. to Dismiss or Stay*. King County filed a renewed motion to dismiss, which  
14 Tacoma joined, and PSA opposed. *King Cnty's Resp. and Renewed Mot.; Opp'n to Mot. to*  
15 *Dismiss; Tacoma's Joinder*. Ecology filed a motion to dismiss or stay, which PSA opposed.  
16 *Ecology's Opp'n to Mot. for Trial Schedule and Mot. to Dismiss or Stay; Resp. to Mot. to Stay*.  
17 King County and Tacoma joined Ecology's motion to dismiss and jointly opposed Ecology's  
18 motion to stay. *King Cnty. and Tacoma's Joint Resp*.

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21 <sup>1</sup> *Puget Soundkeeper All. v. Dep't of Ecology*, PCHB No. 21-082c (Feb. 28, 2025, Order Granting Permittees' Joint Motion for Partial Summ. J. on Threshold Issues).

1 The Board held oral argument on the parties' motions on June 4, 2025. The Board asked  
2 the parties to focus their arguments on the following questions:

3 (1) The Board's questions for Puget Soundkeeper Alliance (PSA): In its briefing,  
4 Ecology asserts that it needs time to exercise its remand authority and discretion to  
5 address the West Point Treatment Facility's nutrient discharges; that PSA's partial  
6 summary judgment motion on Issues 1, 3, 4, and 13 is no longer ripe for review;  
and that the Board cannot issue what would constitute an advisory opinion. What  
is PSA's response to these arguments? Would the Board's ruling on the partial  
summary judgment be an advisory opinion?

7 (2) The Board's questions for Ecology: Has Ecology issued a new West Point  
8 Treatment Facility individual permit since this appeal was filed? If so, what, if any,  
9 changes have been made to the individual permit as it relates to nutrient discharges?  
Ecology stated it is going to modify the current individual permit or revise the Puget  
Sound Nutrient General Permit to address nutrient discharge. What is Ecology's  
position on setting a hearing date in the future?

10 (3) King County argues that the Board should dismiss this appeal as moot and in so  
11 doing, should remand to Ecology that portion of the West Point permit that relies  
12 on the Puget Sound Nutrient General Permit, leaving in place the remainder of the  
13 permit which has not been challenged. What are the parties' positions regarding  
this approach?

14 *Amend. Oral Arg. Scheduling Letter.*

15 While some of the questions were directed to certain parties, each party was given the  
16 opportunity to present oral argument on each question.

### 17 **III. ANALYSIS**

#### 18 **A. Summary Judgement Standard**

19 Summary judgment is a procedure available to avoid unnecessary trials where there is no  
20 genuine issue of material fact. *Am. Express Centurion Bank v. Stratman*, 172 Wn. App. 667,  
21 675-76, 292 P.3d 128 (2012). The summary judgment procedure is designed to eliminate trial if

1 only questions of law remain for resolution, and neither party contests the facts relevant to a legal  
2 determination. *Rainier Nat'l Bank v. Sec. State Bank*, 59 Wn. App. 161, 164, 796 P.2d 443 (1990).

3 Summary judgment is appropriate “if the pleadings, depositions, answers to  
4 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no  
5 genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter  
6 of law.” Civil Rule 56(c). A material fact in a summary judgment proceeding is one affecting the  
7 outcome under the governing law. *Eriks v. Denver*, 118 Wn.2d 451, 456, 824 P.2d 1207 (1992).

8 Summary judgment is subject to a burden-shifting scheme. If the moving party satisfies its  
9 burden, then the nonmoving party must present evidence demonstrating that material facts are in  
10 dispute. *Atherton Condo Apartment-Owners Ass’n Bd. v. Blume Dev. Co.*, 115 Wn.2d 506, 516,  
11 799 P.2d 250 (1990). When determining whether an issue of material fact exists, all facts and  
12 inferences are construed in favor of the nonmoving party. *Jones v. Allstate Ins. Co.*, 146 Wn.2d  
13 291, 300, 45 P.3d 1068 (2002). However, bare assertions concerning alleged genuine material  
14 issues do not constitute facts sufficient to defeat a summary judgment motion. *SentinelC3, Inc. v.*  
15 *Hunt*, 181 Wn.2d 127, 140, 331 P.3d 40 (2014). A nonmoving party cannot rely on speculative  
16 statements or conclusory allegations to defeat summary judgment. *Seiber v. Poulsbo Marine Ctr.,*  
17 *Inc.*, 136 Wn. App. 731, 736, 150 P.3d 633 (2007).

18 If there are no genuine issues of material fact, the Board then determines whether the  
19 undisputed material facts entitle the moving party to judgment as a matter of law. *Skagit Hill*  
20 *Recycling v. Skagit County*, 162 Wn. App. 308, 318, 253 P.3d 1135 (2011).

1                   **B. Legal Issues**

2                   The Board considered the following legal issues which govern the case:

3                   (1) By failing to determine and require application through the National Pollutant  
4                   Discharge Elimination System Waste Discharge Permit No. WA0029181 (“West Point  
5                   Permit”) of All Known, Achievable, and Reasonable Technology (“AKART”) to control  
6                   nutrient discharges from the West Point Wastewater Treatment Plant (“West Point”), did  
7                   the Washington State Department of Ecology (“Ecology”) fail to meet the requirements of  
8                   RCW 90.48.010, 90.48.520, 90.54.020, and WAC 173-220-130?

9                   (3) By failing to impose numeric effluent limits on West Point’s discharge of nutrient  
10                  pollutants to Puget Sound, does the West Point Permit unlawfully cause or contribute to  
11                  violations of water quality standards, contrary to RCW 90.48.520, WAC 173-201A-510(1),  
12                  or WAC 173-220-130?

13                  (4) Does the West Point Permit unlawfully fail to impose conditions necessary to ensure  
14                  that authorized discharges do not cause or contribute to violations of water quality  
15                  standards, contrary to 40 C.F.R. §§ 122.4(a), 122.4(d), or 122.44(d)?

16                  (13) Whether Ecology acted reasonably and within its authority in relying on the Puget  
17                  Sound Nutrient General Permit (PSNGP) to permit nutrient discharges from the West Point  
18                  Treatment Plant?

19                   **C. Legal Analysis**

20                   **a. The Board Grants Appellant’s Motion for Summary Judgment on**  
21                   **Legal Issue 13**

                  Appellant moved for partial summary judgment on Legal Issue 13 and argues that Ecology  
acted unreasonably and beyond its authority in relying on the PSNGP to permit nutrient discharges  
from West Point. *Appellant’s Mot.*, pp. 12-15. Appellant asserts that the West Point Permit  
includes no effluent limits for nutrients and that the permit relies on the PSNGP to regulate nutrient  
discharges from West Point in violation of state and federal law, which require NPDES permits to  
contain such limits as necessary to ensure discharges do not cause or contribute to violations of

1 water quality standards. *Id.* Appellant argues that Ecology’s reliance on the PSNGP to regulate  
2 nutrient discharges from West Point is inapposite because state law does not provide for an  
3 exception to the requirements of the CWA and chapter 90.48 RCW through reference to another  
4 document—in this case, the PSNGP. *Id.*, p. 15. Appellant further asserts that the PSNGP was  
5 invalidated insofar as it was mandatory for dischargers with individual permits, which renders the  
6 West Point Permit devoid of any effluent limits for nutrients in violation of state and federal law.  
7 *Id.*, pp. 12-15.

8 King County argues that the Board should deny Appellant’s motion for partial summary  
9 judgment in its entirety and dismiss this case as moot because the PSNGP has been invalidated  
10 and remanded to Ecology or, in lieu of dismissal, continue proceedings in this case subject to the  
11 pending resolution of the PSNGP appeal. *King Cnty’s Reply*, p. 6. Ecology joined King County’s  
12 motion to dismiss and opposes granting partial summary judgment to Appellant on Legal Issue 13,  
13 arguing that under state and federal law, Ecology is authorized to regulate a facility’s nutrient  
14 discharges through a general permit while regulating the discharge of other pollutants under  
15 individual permits. *Ecology’s Joinder*, pp. 18-19.<sup>2</sup> King County and Ecology further argue that  
16 Appellant’s contention that the PSNGP fails to satisfy state and federal permitting requirements  
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19 <sup>2</sup> However, at oral argument, Ecology’s attorney stated: “[i]f the Board wanted to remand the West Point Permit, it  
20 would have to do so along the contours of the PSNGP appeal decision. And I think the only thing that would be  
21 consistent with that would be ruling in favor of PSA on [Legal] Issue #13 as to whether or not it was lawful or within  
the authority of Ecology to rely on the PSNGP. And that would be the mandatory version of the PSNGP such that any  
remand and any decision would be for the reason stated in the PSNGP appeal decision.” *Oral Arg. Tr.*, 36m:27s-  
37m:18s.

1 for effluent limitations on nutrient discharges is a meritless collateral attack on the PSNGP. *King*  
2 *Cnty's Mot.*, pp. 5-6; *Ecology's Joinder*, pp. 19-20.

3 It is undisputed that the West Point Permit does not contain effluent limits for TIN—the  
4 compound responsible for nutrient pollution in Puget Sound. *Ecology's Joinder*, p. 10; *Appellant's*  
5 *Mot.*, p. 12.<sup>3</sup> Ecology issued the West Point Permit on the premise that nutrient pollution would  
6 be regulated through the PSNGP. *Ginsberg Decl.* ¶ 6, *Ex. E*, pp. 81-82; *Ecology's Joinder*, p. 10.  
7 However, in the PSNGP appeal, the Board concluded Ecology did not have the “authority to use  
8 general permits as a mechanism to layer new regulatory requirements on top of existing individual  
9 permits.” *Puget Soundkeeper All. v. Dep't of Ecology*, PCHB No. 21-082c, p. 30 (Feb. 28, 2025,  
10 Order Granting Permittees' Joint Motion for Partial Summ. J. on Threshold Issues). The Board  
11 invalidated the PSNGP insofar as it was mandatory for dischargers with individual permits and  
12 remanded it back to Ecology for further action consistent with the Board's decision. *Id.*, p. 31.  
13 Because Ecology continued to rely on invalidated portions of the PSNGP to regulate nutrients,  
14 current discharges from West Point are not subject to any effluent limitations for nutrient pollution.  
15 This plainly contravenes state and federal laws that require NPDES permits to include effluent  
16 limits necessary to ensure permitted dischargers do not cause or contribute to violations of water  
17 quality standards. 33 U.S.C. § 1311(b); RCW 90.48.162; WAC 173-201A-510(1).

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<sup>3</sup> The Board rejects King County's argument that there is a genuine dispute of material fact regarding whether the West Point Permit contains effluent limits for TIN. *King Cnty's Mot.*, p. 3; *King Cnty's Reply*, p. 6. The Board agrees with Ecology that the West Point Permit does not contain any such effluent limits as it was designed to rely on the currently invalidated PSNGP to regulate nutrient pollution. See *Ecology's Joinder*, p. 10 (“Thus, the individual permit itself does not contain effluent limits for TIN.”); *Ginsberg Decl., Ex. E*, pp. 81-82 (“This individual permit does not contain limits or other conditions related to the regulation of nutrients.”).

1 Consistent with the Board’s decision in the PSNGP appeal, the Board concludes that  
2 Ecology acted unreasonably and beyond its authority when it continued to rely on invalidated  
3 portions of the PSNGP to regulate nutrient discharges from West Point after they were remanded  
4 to Ecology for the reasons articulated above.

5 Accordingly, the Board grants Appellant’s motion for summary judgment on Legal Issue  
6 13. The Board invalidates the West Point Permit insofar as it is inconsistent with state and federal  
7 law requiring NPDES permits to include effluent limits for nutrients and remands the West Point  
8 Permit to Ecology for further action in accordance with the law and this decision.<sup>4</sup> The Board does  
9 not invalidate any other portions of the West Point Permit.

10 **b. The Board Does Not Reach Legal Issues 1, 3, and 4**

11 Appellant moved for partial summary judgment on Legal Issues 1, 3, and 4. The Board  
12 considers Legal Issue 13 dispositive in this case and, therefore, does not reach the merits of Legal  
13 Issues 1, 3, or 4. *See, e.g., Puget Soundkeeper All. v. Dep’t of Ecology*, PCHB No. 21-082c, p. 31  
14 (Feb. 28, 2025, Order Granting Permittees’ Joint Motion for Partial Summ. J. on Threshold Issues);  
15 *Burbank Irrigation Dist. #4 v. Dep’t of Ecology*, PCHB No. 20-068, pp. 13, 19 (Dec. 20, 2021,  
16 Order Granting Ecology’s Motion for Summ. J.).

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20 <sup>4</sup> The Board only invalidates the portion of the West Point Permit that relies on the currently invalidated PSNGP for  
21 regulating nutrient pollution. *See Ginsberg Decl., Ex. E, pp. 81-82* (“King County’s West Point Treatment Plant is  
covered by the PSNGP, which includes requirements for the control and monitoring of nutrients. This individual  
permit does not contain limits or other conditions related to the regulation of nutrients.”).

1                   **c. The Board Denies Respondents’ Motions to Dismiss or Alternatively**  
2                   **Continue Proceedings**

3           On July 25, 2024, King County moved to dismiss this appeal on the basis that it was an  
4 impermissible attack on the 2021 PSNGP, raised the same issues articulated in the PSNGP appeal,  
5 and had the potential to adversely affect parties to the PSNGP appeal. *King Cnty’s Mot.*, pp. 1-2.  
6 Alternatively, King County requested the Board to continue proceedings in this appeal on the same  
7 grounds pending the Board’s resolution of the PSNGP appeal. *Id.*, p. 2. On March 25, 2025, King  
8 County filed a renewed motion to dismiss, which Tacoma joined, arguing that PSA’s claims are  
9 moot because the Board’s decision in the PSNGP appeal necessarily addressed the issues PSA  
10 raises in this appeal, and any decision in this case would constitute an advisory opinion. *King*  
11 *Cnty’s Resp. and Renewed Mot.*, pp. 1-2; *Tacoma’s Joinder*, p. 1.

12           On March 31, 2024, Ecology also moved to dismiss or, alternatively, stay this appeal  
13 pending the implementation of the currently invalidated and remanded provisions of the PSNGP.  
14 *Ecology’s Opp’n to Mot. for Trial Schedule and Mot. to Dismiss or Stay*, pp. 2-3; *Ecology’s Reply*  
15 *in Support of Mot. to Stay*, p. 2. Ecology asserted that this case is not ripe for review because  
16 Ecology is in the process of modifying the PSNGP “‘via a public process this Spring,’ after which  
17 permittees will have the opportunity to indicate whether they intend to opt in. Permittees that do  
18 not opt in will have their individual permits modified or reissued.” *Ecology’s Reply to Mot. to Stay*,  
19 p. 3 (citations omitted). Ecology asserts that if King County chooses to opt-in to the voluntary  
20 general permit, PSA cannot collaterally attack that permit through this challenge to the West Point  
21 Permit and, if King County declines to opt-in to the voluntary general permit, Ecology will need

1 to modify the West Point Permit thereby rendering PSA's claims not ripe until those changes occur.  
2 *Id.*, p. 4. Ecology further argues that if the Board were to issue an order on this matter at this time  
3 it would be an advisory opinion because Ecology must be given the opportunity to develop and  
4 apply new PSNGP provisions regulating West Point's nutrient discharges before the Board  
5 determines the legality of those provisions. *Ecology's Opp'n to Mot. for Trial Schedule and Mot.*  
6 *to Dismiss or Stay*, p. 2; *Ecology's Reply in Supp. of Mot. to Stay*, p. 4.

7 Appellant opposed Respondents' respective motions to dismiss or alternatively continue  
8 proceedings, arguing that because provisions of the PSNGP have been invalidated and remanded  
9 to Ecology, this appeal is the only case in which Appellant can obtain relief from the ongoing harm  
10 to the Puget Sound caused by unregulated nutrient discharges from West Point. *[PSA's] Opp'n to*  
11 *Mot. to Dismiss*, p. 4. Appellant further asserts that, consistent with the Board's decision in the  
12 PSNGP appeal, mandatory effluent limits for nutrient pollution can only be imposed on West Point  
13 through its individual NPDES permit. *Id.* As such, Appellant argues that the Board has the  
14 authority to provide relief in this case by finding the West Point Permit fails to provide effluent  
15 limitations for nutrient pollution. *Id.*, p. 6.

16 The Board disagrees with Respondents that Appellant's claims are rendered moot or not  
17 ripe by the Board's decision in the PSNGP appeal invalidating certain provisions of the general  
18 permit. As stated above, Ecology's continued reliance on provisions of the PSNGP to regulate  
19 nutrients after they were invalidated was unreasonable and unlawful and renders the West Point  
20 Permit devoid of any effluent limitations on nutrients. The Board has the authority to grant  
21 Appellant relief by invalidating and remanding the West Point Permit insofar as it is inconsistent

1 with state and federal law. Thus, the Board concludes a stay in this case is inappropriate because  
2 it is granting Appellant relief through the resolution of Legal Issue 13.

3 Accordingly, the Board denies Respondents' motions to dismiss or alternatively continue  
4 proceedings.

5  
6 **d. The Board Denies Appellant's Motion for Trial Schedule**

7 Appellant moved to set a trial schedule in this appeal, arguing that a trial schedule is  
8 necessary in this matter to preserve its right to a fair trial and to a ruling on the merits, which  
9 Appellant contends is urgent because the ongoing nutrient pollution from West Point is degrading  
10 water quality in the Puget Sound. *Mot. for Trial Schedule*, p. 3. Appellant further argues that the  
11 Board can set a trial schedule and also decide pending dispositive motions. *Reply to Mot. for Trial*  
12 *Schedule*, p. 3.

13 Respondents opposed Appellant's motion for setting a trial schedule arguing that, as  
14 articulated above, the Board should dismiss this appeal because PSA's claims are moot and not  
15 ripe for review, which vitiates the need for setting a trial schedule in this matter. *King Cnty's Resp.*  
16 *and Renewed Mot.*, pp. 1-2; *Ecology's Opp'n to Mot. for Trial Schedule and Mot. to Dismiss or*  
17 *Stay*, p. 2; *Ecology's Reply in Supp. of Mot. to Stay*, p. 4; *Tacoma's Joinder*, p. 1.

18 The Board denies Appellant's motion to set a trial schedule because the applicable portions  
19 of the West Point Permit are invalidated and remanded to Ecology for further action in accordance  
20 with the law and this decision. Accordingly, the Board concludes a trial schedule in this matter is  
21 no longer necessary as this case is resolved on the grounds stated in this order.

1                   **C. Summary**

2                   Based on the above analysis, the Board grants summary judgment on Legal Issue 13 as  
3 requested by Appellant, invalidates the West Point Permit insofar as it is inconsistent with state  
4 and federal law, and remands the West Point Permit to Ecology in accordance with the law and  
5 this decision. Because the Board considers Legal Issue 13 dispositive, it does not reach Legal  
6 Issues 1, 3, and 4. The Board denies the motion to dismiss or alternatively continue proceedings  
7 as requested by Respondents. The Board denies the motion for trial schedule as requested by  
8 Appellant.

9                                   **IV. ORDER**

10                   The Board GRANTS APPELLANT’S motion for partial summary judgment on Legal  
11 Issue 13. The Board INVALIDATES the West Point Permit insofar as it is inconsistent with state  
12 and federal law and REMANDS the permit to Ecology for further action consistent with the law  
13 and this Order. The Board DENIES RESPONDENTS’ motion to dismiss or alternatively continue  
14 proceedings. The Board DENIES APPELLANT’S motion for trial schedule. The appeal is  
15 DISMISSED.

16                   SO ORDERED this 6th day of August, 2025

17                                   **POLLUTION CONTROL HEARINGS BOARD**

18                                   

19                                   MICHELLE GONZALEZ, Chair

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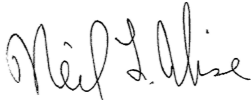
21                                   CHRISTOPHER G. SWANSON, Member

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GABRIEL E. VERDUGO, Member



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NEIL L. WISE, Presiding  
Administrative Appeals Judge

This is a FINAL ORDER for purposes of appeal to Superior Court within 30 days.  
*See* Administrative Procedures Act (RCW 34.05.542) and RCW 43.21B.180.

You are being given the following notice as required by RCW 34.05.461(3): Any party may file a petition for reconsideration with the Board. A petition for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final decision. WAC 371-08-550.