

Tesoro Refining & Marketing Company LLC
NPDES Permit WA0000761
Supplemental Fact Sheet
October 17, 2014

The Department of Ecology (Ecology) proposed a draft NPDES permit for Tesoro Refining & Marketing Company LLC on May 29, 2013. Ecology invited public review of the proposed permit and provided a 60-day public comment period, ending on July 29, 2013. The responses to the comments received are documented in the Response to Public Comments dated October 17, 2014.

Ecology has made significant revisions to the draft permit in response to public comment and a ruling by the Pollution Control Hearings Board on the BP Cherry Point Refinery permit appeal. Ecology also made a number of other revisions to Tesoro's NPDES permit to reflect changes in Ecology's reporting requirements and changes at the refinery since the first public comment period. The proposed changes are discussed in this Fact Sheet.

PROPOSED PERMIT CHANGES

1. *Facility Name*

The facility name was changed to Tesoro Refinery and Marketing Company LLC throughout the permit.

2. *Effluent Limitations at Outfall 001*

Condition S1.A. was revised to correct the effluent limits for Outfall 001. The new limits reflect a 10% increase from 2002 permit levels.

3. *Flow Monitoring at the Secondary Clarifier*

Condition S1.A. was revised to add a requirement to install a flow meter and monitor at the effluent from the secondary clarifier. This monitoring is to demonstrate compliance with the facility loading requirement in S5.

4. *Removal of Outfalls 002 and 004*

The facilities that discharge to Outfalls 002 and 004 were purchased by Tesoro Logistics Operations (TLO). TLO is separately owned and operated. Non-oily stormwater discharges at Outfalls 002 and 004 are now covered by the Industrial Stormwater General Permit. Oily stormwater is sent to the refinery for treatment in the wastewater treatment system and is covered by a State Waste Discharge Permit.

5. *Firewater testing*

Condition S1.C. was removed from the permit. Tesoro no longer tests the firewater system with treated effluent.

6. *Tesoro Logistics Operations*

Condition S1.D. was added to the permit to authorize the refinery to accept untreated wastewater from Tesoro Logistics Operations and treat it in the wastewater treatment system.

7. *Electronic Reporting*

Condition S3.A. was revised to remove several remaining references to paper submittals of Discharge Monitoring Reports and to require electronic reporting of other permit-required documents.

8. *WET Test Failure that is a Permit Violation*

Conditions S7. D. was revised to identify when a WET test failure is a permit violation. The new wording in S7.D. states: "If any toxicity test conducted under subsection D.1. shows a statistically significant difference in response between the ACEC and the control, using the statistical test described in subsection C, then the test result is a violation of the permit. The Permittee must submit a Toxicity Identification/Reduction Evaluation (TI/RE) plan to Ecology within 60 days after the sample date [WAC 173-205-100(2)]."

9. *Herring Toxicity Study*

The herring toxicity study, Condition S.9, was removed from the permit. Instead, Ecology and Tesoro signed Agreed Order No. 10299 requiring Tesoro to conduct a herring chronic toxicity study. A number of changes from the permit language were agreed to in the herring order: no acute testing, no submittal of a Toxicity Implementation Plan, number of tests reduced to six, no comparisons to ACEC or CCEC, and comparisons to two additional EPA tests for the larval survival and growth test.

The herring chronic toxicity study will run side-by-side comparisons of the toxicity of Tesoro's effluent to herring vs. other species used in EPA standard tests. Conducting toxicity testing with herring can be difficult because an adequate supply of the species is not always available and there are few labs approved for the work. The focus of the study is to determine if another, more readily available species can adequately predict impacts to herring.

10. *Pollution Prevention Plan*

Appendix C was revised to clarify that the SWPPP includes elements of the ISWGP rather than incorporating them by reference.

11. *Outfall Evaluation*

Condition S14. was revised to include a list of items that must be inspected during the evaluation.

12. *Certified Operator*

Condition S16. was revised to allow Tesoro 180 days to comply with the new requirement.

PUBLIC INVOLVEMENT INFORMATION

Ecology has tentatively determined to revise the draft NPDES permit for the Tesoro Refinery. The Department will publish a Public Notice of Draft (PNOD) on October 29, 2014 in the *Anacortes American* to inform the public that a revised draft permit and fact sheet are available for review.

Interested persons are invited to submit written comments regarding the proposed changes to the draft permit. The revised draft permit, supplemental fact sheet, and related documents are available for inspection and copying between the hours of 8:00 a.m. and 5:00 p.m. weekdays, by appointment, at the Ecology offices listed below.

Department of Ecology
Industrial Section
300 Desmond Drive
Lacey, WA 98503

Written comments should be mailed to:

J. Mark Dirx
Department of Ecology
Industrial Section
PO Box 47600
Olympia, WA 98504-7600

Comments should reference specific text followed by the requested change or concern when possible. **Ecology will only consider comments that pertain to the proposed permit changes.**

Ecology will consider all comments received within thirty (30) days from the date of public notice of the draft indicated above, in formulating a final determination to revise and reissue the permit. The Department's response to all significant comments is available upon request and will be mailed directly to people expressing an interest in this permit.

Further information may be obtained from the Department by telephone at (360) 407-6937 or by writing to the address listed above.

RESPONSE TO COMMENTS

Ecology published notice of an opportunity to comment on the revised draft NPDES Permit No. WA0000761 in the Skagit Valley Herald's Anacortes American on October 29, 2014. The proposed permit will allow the Tesoro Refinery to discharge treated process wastewater and stormwater to Fidalgo Bay. In the notice, Ecology invited public review of the revised draft permit and provided a 30-day public comment period. The deadline for submittal of written comments was December 1, 2014.

Ecology received comments from:

1. Katelyn Kinn, Puget Soundkeeper Alliance/Marcie Keever and Fred Felleman, Friends of the Earth/Crina Hoyer, RE Sources for Sustainable Communities
2. Paul Johnston, Tesoro Refining and Marketing Company

We included all of the comments received in this document. Comments appear in regular text, followed by Ecology's response in italicized text. Ecology will send a copy of this response to each individual who provided comments.

Comments from Puget Soundkeeper Alliance, Friends of the Earth, and RE Sources for Sustainable Communities

1. Effluent Limits at Outfall 001

In response to comments on the 2013 draft submitted by Soundkeeper and others, Ecology capped the increase in Tesoro's effluent limits at 10% higher than limits in the previous permit. While this is a marked improvement from the 21% increase proposed in the 2013 draft, it is still disappointing and disconcerting because it works in direct contravention to the goals of the Clean Water Act.

When the Federal Water Pollution Control Act was reorganized and expanded in 1972, Congress agreed on an articulated national goal "that the discharge of pollutants into the navigable waters be eliminated by 1985." 33 U.S.C. 1251(a)(1). Although the timeline for meeting this goal has long-since fallen by the wayside, the policy it created absolutely must guide all permit decisions made by the agencies with delegated authority to administer it. Ecology should defer to the policy of continued reduction in pollution entering our waterways. At the very least, it must ensure that permits get more stringent over time, and that Tesoro discharges fewer pollutants into Fidalgo Bay today than it did in the past.

How is a 10% increase in Tesoro's effluent limits furthering the Clean Water Act's goal of reducing pollution to our waterways? With this revision, isn't Ecology acknowledging and allowing Tesoro to discharge more pounds per day of pollution into Fidalgo Bay today than it discharged in the past?

Soundkeeper fears that with this permit, Ecology may be losing sight of its responsibility to further the goals of the Clean Water Act, and deferring instead to heavy pressure applied by industry. Too often, an industrial entity's interest in financial gain outweighs consequential externalized costs to water quality and degradation in the surrounding marine environment. Puget Soundkeeper, Friends of the Earth, RE Sources for Sustainable Communities, their members, and the general public have consistently affirmed the goal of preserving water quality in Puget Sound. In balancing those interests, Ecology has the regulatory authority and obligation to prioritize the protection of Puget Sound. How can Ecology claim that its decision to increase Tesoro's effluent limits prioritizes Puget Sound?

In addition, Soundkeeper reiterates its 2013 comment that a sizeable increase in facility process throughput constitutes an "expansion" which triggers a Tier II analysis pursuant to Ecology's guidance document. Ecology Publication no. 11-10-073, Sept 2011. Ecology's October 17, 2014, response to comments did not address this argument. Soundkeeper maintains that a Tier II analysis is required prior to issuing this permit.

Ecology's Supplemental Guidance on Implementing Tier II Antidegradation (Publication No. 11-10-073, September 2011) states that only new or expanded actions are potentially eligible for a Tier II analysis. "Expanded" means:

- *A physical expansion of the facility (production or wastewater system expansions with a potential to allow an increase in the volume of wastewater or the amount of pollution) or activity.*
- *An increase (either monthly average or annual average) to an existing permitted concentration or permitted effluent mass limit (loading) to a water body greater than 10%.*
- *The act of re-rating the capacity of an existing plant greater than 10%.*

There has not been a physical expansion of the Tesoro facility that caused the higher production levels and there has not been a re-rating of the capacity of the refinery. Refineries typically operate below their design capacity in response to market demand and because of maintenance and process unit shut downs. We see increases in production when a refinery is returning to levels closer to their original design capacity and when they have optimized operations to increase crude throughput.

If Ecology had included the effluent limits allowed under the federal effluent guidelines for the production increases in the proposed permit, this would have been considered an expansion and would have triggered a Tier II analysis. The calculated effluent limits ranged from 10 to 20% higher than the 2006 permit levels. Instead, we capped the effluent limits at 10% over the 1998 permit levels. The proposed effluent limits range from 5 to 10% over 2006 permit levels. Should Tesoro want increased effluent limits in the future, they will have to conduct a Tier II analysis.

It is important to note that in addition to the effluent limits, the proposed permit includes conditions that require Tesoro to properly operate and maintain its wastewater treatment system and to evaluate and implement measures to eliminate or reduce pollutants to wastewater streams, stormwater, and/or waters of the state. These conditions require Tesoro to maintain or improve upon its wastewater treatment performance.

2. Flow Monitoring at Secondary Clarifier

Soundkeeper is reassured by this revision, which adds continuous monitoring of flow at the effluent from the secondary clarifier. Thank you for addressing Soundkeeper's 2013 comment urging Ecology to specify the location to which the flow limit is applied.

Comment noted.

3. Removing Firewater Testing Requirements

Thank you for addressing Soundkeeper's concerns related to the use of treated effluent for fire water testing. It appears that Ecology's response – removal of this provision from the permit, and discontinuation of the use of effluent for fire water testing at this facility – addresses Soundkeeper's concerns stemming from the surface application of effluent on and in close proximity to herring spawning habitat.

What will be the source of fire water testing moving forward?

The source of fire water testing is fresh water supplied by the public utility.

4. Whole Effluent Toxicity (WET) Test Provision

Thank you for responding to Soundkeeper's 2013 comments urging revision of Condition S7. Unfortunately, Soundkeeper still has valid concerns about the revised draft permit's WET requirements.

Soundkeeper was a party to the 2012 appeal of the BP Cherry Point Refinery permit and Pollution Control Hearings Board (PCHB) proceedings resulting in the PCHB's decision on the acute WET effluent limitation (order on summary judgment, July 26, 2013). The Court of Appeals granted direct review of that decision in February 2014. The pending Court of Appeals case is fully briefed, and a hearing is expected this winter. Soundkeeper has also appealed the December 2, 2013, modification to the BP permit to the PCHB. Soundkeeper also appealed the 2014 Phillips 66 permit to the PCHB, and, most recently, submitted detailed comments on the 2014 Intalco draft permit to Ecology.

For the following reasons, Soundkeeper asserts that the WET provision in Tesoro's draft permit, specifically condition S7, is inadequate to comply with either state law or the terms of the July 26, 2013 PCHB order in the BP appeal.

a. The Permit Should Prohibit Toxic Discharges

The October 17, 2014 fact sheet issued along with the revised draft of Tesoro's permit makes clear that Ecology believes its revision to be consistent with the PCHB's decision in the BP case. As noted above, that order has been appealed to the Court of Appeals. As part of this ongoing legal debate, Soundkeeper insists that the order reflects a faulty interpretation of state law on WET effluent limitations.

Soundkeeper maintains that the permit may not authorize a discharge that fails the compliance test for acute or chronic WET, thus violating the effluent limit for acute or chronic toxicity. Washington's water quality standards prohibit the discharge of toxic substances that cause acute or chronic toxicity in the receiving waters. WAC 173-201A-240. The following prohibition is found in state statute: "In no event shall the discharge of toxicants be allowed that would violate any water quality standard, including toxicant standards, sediment criteria, and dilution zone criteria." RCW 90.48.520. The purpose of the WET testing under WAC 173-205 is to determine whether a discharge is toxic and subject to the prohibition. This regulation describes monitoring for compliance with WET limits, and states that the compliance test "shall be considered to be a maximum daily discharge permit limitation." WAC 173-205-070(1)(d) and 173-205-070(2)(d).

The test for permit compliance must be the same as the compliance test for acute and chronic toxicity, as defined by the regulation. The permit may not authorize a toxic discharge, which is one that fails the acute or chronic toxicity compliance test. Condition S7 already provides procedures for Tesoro to demonstrate that a failing WET test is an anomaly to invalidate it. There is no legal, practical, or rational basis for interpretation of these state laws and regulations that would allow authorization of any discharge that fails a WET compliance test. Condition S7 should be rewritten to effect the prohibition on toxic discharges by equating any failure of the compliance test with violation of the acute or chronic WET effluent limitation and the permit.

b. The Anomaly Allowance should be Singular, Not Quarterly

Even if the Court of Appeals accepts the PCHB's interpretation in its July 2013 order in the BP case, the proposed provisions in Tesoro's draft permit are problematic. These provisions as drafted make violations of the permit contingent on the failure of a follow-up WET test for each regularly scheduled acute and chronic WET compliance test failure. In other words, no failure of a regularly scheduled WET test would constitute a permit violation unless a subsequent test is also failed. This is unacceptable. Repeated failures of regularly scheduled WET tests indicate an ongoing pattern of toxicity regardless of the results of each follow-up test. S7 should clarify that any failure of any WET test during the permit term constitutes a permit violation.

Soundkeeper recognizes that the proposed language represents a minor improvement over similar language in other permits, including BP's. Specifically, S7.D. includes mention of a situation where a toxicity test may be "a violation of the permit". However, the language still fails for lack of clarity, and the provisions still suffer from the fundamental problems noted above.

Soundkeeper would point to the WET limit language that Ecology's Northwest Regional Office incorporated into NPDES Permit No. WA0031968 for Seattle Iron & Metals Corporation as a more appropriate permit drafting response to the PCHB's order on WET Limitations.

With respect to part a of the comment -- the WET language in the permit is consistent with the PCHB's decision regarding exceedances of WET limitations. The Board deferred to Ecology's determination that a single WET limit exceedance does not indicate a pattern of toxicity. Instead, it triggers additional testing aimed at determining if there is continued toxicity and a violation of the toxicity standard in the permit. If any of the subsequent tests fail the WET limit, that test failure is a violation of the permit.

If the PCHB ruling is overturned by the Court of Appeals, Ecology will need to carefully review the decision to determine the appropriate course of action. How that decision would be implemented in the permit would be based upon the Court's direction to Ecology.

With respect to part b of the comment -- while the proposed permit language may not cover the exact scenario described in the comment, the permit is not the only tool that Ecology has to address this situation. Follow-up testing for repeated failures in compliance monitoring can be a very costly scenario for any permittee. As such, the permittee would have an incentive to initiate the Toxicity Identification/Reduction Evaluation (TI/RE) process on their own, in accordance with WAC 173-205-090(4). An additional incentive is Ecology's ability to reduce compliance monitoring during the TI/RE process if the conditions of WAC 173-205-100(4) are met.

WAC 173-205-090(2) requires that any permittee failing the compliance test for a WET limit shall take all reasonable actions to achieve compliance including conducting a TI/RE. If the described scenario occurred and the permittee did not initiate the TI/RE on their own, Ecology would have the authority to issue an order requiring the facility to conduct a TI/RE.

Comments from Tesoro Refining & Marketing Company

5. Tesoro believes that an enforceable violation of permit condition S7 occurs only if a permittee fails to comply with the process set forth in both the applicable regulations (ch. 173-205 WAC) and the Permit. Exceedances of WET limits, by themselves, do not constitute a permit violation.

The PCHB disagreed with this thinking in their decision on the recent BP appeal. Please see the response to Comment 4.

6. Tesoro requests that Ecology remove the requirement for continuous monitoring of *Flow from the Secondary Clarifier* from condition S1. Monitoring flow at this location is unnecessary to show compliance with the design capacity (as stated in permit condition S5) of the facility because final effluent total flow is already measured at the final discharge. The

final effluent flow, including stormwater that does not flow through the treatment process, has not exceeded the design capacity of the facility in the last five years. Adding an additional flow meter would only provide redundant data showing that the facility is not operated above its design capacity. The installation of a new flow meter at the Secondary Clarifier location would also be extremely expensive with an estimated cost of up to \$550,000 (see attached engineering cost estimate) and would not enhance compliance with the applicable requirements. Tesoro proposes instead that the requirement for installing the Secondary Clarifier flow meter be included as a term of condition S5, as noted below.

Measurement of process wastewater flow through the Wastewater Treatment (WWT) plant is required to demonstrate compliance with the design criteria in Condition S5.A.

7. Tesoro requests that Ecology revise condition S5 to place the flow measurement location at the final effluent discharge along with modifying section B to read as follows:

B. Plans for Maintaining Adequate Capacity

The Permittee must submit to Ecology a plan and a schedule for continuing to maintain capacity when:

1. The final effluent flow or waste load reaches 85 percent of any one of the design criteria in S5.A for three consecutive months; or
2. The projected increase would reach design capacity within five years, whichever occurs first.

If such a plan is required, it must contain provisions and a schedule for continuing to maintain capacity. The capacity as outlined in this plan must be sufficient to achieve the effluent limitations and other conditions of this permit. The plan must address the following actions and any others necessary to meet the objective of maintaining capacity.

1. Installation of a flow meter at the secondary clarifier to confirm the higher flow is not due to additional untreated stormwater.
2. Analysis of the present design including the introduction of any process modifications that would affect the ability of the existing facility to achieve effluent limits and other requirements of this permit at levels in excess of the existing design criteria specified in paragraph A, above.
3. Reduction or elimination of excessive infiltration and inflow into the sewer system.
4. Limitation on future additional waste loads.
5. Modification or expansion of facilities necessary to accommodate increased flow or waste load.

Engineering documents associated with the plan must meet the requirements of WAC 173-240-060, "Engineering Report," and be approved by Ecology prior to any construction.

The final effluent includes process wastewater commingled with non-contact stormwater. Although Tesoro's proposal has some merit, it is important to have a direct, accurate mechanism in place now to measure the process wastewater flow. Also, Condition S5.B. is included in the permit to ensure that Tesoro maintains effective and efficient treatment of their process wastewater, not to provide a trigger for installing a flow meter. No changes were made to this condition.

8. Finally, should the requirement to install a flow meter at the secondary clarifier stand, Tesoro requests that Ecology grant a minimum of 30 months to allow for budgeting, engineering and installing the flow meter in what will be an extensive retrofit project.

The permit was changed to require installation of a flow meter at the secondary clarifier by October 31, 2016.