

**Tesoro Refining & Marketing Company LLC – NPDES Permit No. WA0000761**

**Supplemental Fact Sheet  
November 4, 2015**

Whole effluent toxicity (WET) testing is a form of biological monitoring to determine if a wastewater discharge will have toxic effects on organisms similar to or the same as those in the receiving water. WET testing is used because it is not possible to develop water quality standards for all of the toxic pollutants possibly found in wastewater discharges. WET testing is also the only method available for assessing the toxic interaction of pollutants.

In 2012, three environmental organizations appealed language in the wastewater discharge permit for the BP Cherry Point Refinery. The language allowed the refinery to remain in compliance with the permit after failing a whole effluent toxicity test, as long as BP took certain subsequent measures. The permit required BP to conduct additional testing to confirm the presence of toxicity and if present, submit a plan to identify the cause of the toxicity and proposed measures to reduce or eliminate it.

The environmental organizations also appealed the wastewater discharge permit for the Tesoro Anacortes Refinery.

In July 2015, the Court of Appeals ruled that a single failed WET test, not deemed anomalous by the Department of Ecology, is a violation of the permit. The Court's ruling is narrow and applies only to compliance testing in permits for which there is an acute or chronic WET limit.

The Department of Ecology (Ecology) has revised the Tesoro permit in response to the Court's ruling. These revisions are discussed in more detail below.

**PROPOSED PERMIT CHANGES**

Tesoro has an acute WET limit at Outfall 001 but not a chronic limit. Permit Condition S7.B. and S7.D. were revised to incorporate new language to reflect the Court's decision.

**PUBLIC INVOLVEMENT INFORMATION**

Ecology proposes to modify the Tesoro NPDES permit. The Department will publish a Public Notice of Draft Modification on November 4, 2015 in the Anacortes American to inform the public that the draft modified permit and fact sheet are available for review.

Interested persons are invited to submit written comments regarding the proposed changes to the permit. The draft modified permit and supplemental fact sheet 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  
(360) 407-6916

They are also available at the Anacortes Public Library and online at <https://fortress.wa.gov/ecy/industrial/UIPermit/DraftPermits.aspx>.

Written comments on the Tesoro permit should be mailed to:

J. Mark Dirx  
Department of Ecology  
Industrial Section  
P. O. Box 47600  
Olympia, WA 98605-7600  
[mark.dirx@ecy.wa.gov](mailto:mark.dirx@ecy.wa.gov)

Comments should reference the 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 modify the respective 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 on the proposed changes to the Tesoro permit may be obtained from the Department by telephone at (360) 407-6937 or by writing to the address listed above.

**WASHINGTON STATE DEPARTMENT OF ECOLOGY  
RESPONSE TO PUBLIC COMMENTS**

**Tesoro Refining & Marketing Company  
P. O. Box 700  
Anacortes, Washington 98221**

**NPDES Permit No. WA0000761  
February 24, 2016**

The Department of Ecology (Ecology) published notice of an opportunity to comment on the proposed modification to NPDES Permit No. WA 0000761 in the Skagit Valley Herald's Anacortes American on November 4, 2015. Ecology revised Permit Conditions S7. to reflect the Court of Appeal's decision regarding non-compliance with Whole Effluent Toxicity (WET) limits. In the notice, Ecology invited public review of the proposed permit changes and provided a 30-day public comment period. The deadline for submittal of written comments was December 7, 2015. Ecology received written comments from two entities and one individual.

Comments were received from:

1. Merle Jefferson, Lummi Natural Resources
2. Katelyn Kinn and Marcie Keever, Puget Soundkeeper Alliance and Friend of the Earth
3. Carol O'Hearn, Anacortes resident

Internal comments were also received from Ecology's Water Quality Program.

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 comments to each individual who provided comments.

**Comments from Merle Jefferson, Lummi Natural Resources (1.)**

1. The Lummi Natural Resources Department supports the recent Court of Appeals ruling that a failure of a single "Whole Effluent Toxicity" (WET) test constitutes a permit violation, requiring an investigation of toxicity. According to your comment notice, this applies if the test is not determined to be anomalous (unreliable results due to testing problem).

In areas adjacent to these NPDES wastewater discharges, we believe maintaining a high level of near shore marine water quality is essential. These locations are important spawning beds for Pacific Herring whose eggs must incubate in these waters for several weeks prior to hatching. Larval forms of other forage fish like surf smelt and sand lance (important prey

items for juvenile salmon), manila clams, and crabs are other important marine resources found along these shorelines which require a high standard for water quality in order to survive.

In addition, bio-concentration of toxins may lead to increased disease, impacts on growth and reproductive impairment. Chronic or acute toxic events at these industries can be transported via contaminated zooplankton prey, larval fish, and juvenile or adult fish advection/migration to a much larger regional area. This expands the impact on other predator species which include halibut, other predatory fish, sea birds, marine mammals and human.

Initiating an investigation to determine the source of toxicity following a WET test failure is an appropriate response and should be a high priority. If the source of toxicity can be found, it may be possible to correct a problem and improve operations so as to minimize future occurrences.

*Comments noted.*

**Comments from Katelyn Kinn and Marcie Keever, Puget Soundkeeper Alliance and Friends of the Earth (2.)**

2. Puget Soundkeeper Alliance and Friends of the Earth offer this letter simply to express support of the proposed permit changes. The revisions appear to reflect the July 2015 Court of Appeals of Washington decision in *Puget Soundkeeper Alliance v. Washington State Pollution Control Hr'gs Bd*, 189 Wn. App. 127, 356 P.3d 753 (2015) requiring specification that a single failed WET test, not deemed anomalous by the Department of Ecology, establishes a violation of the NPDES permit.

*Comments noted.*

**Comments from Carol O'Hearn, Anacortes Resident (3. - 6.)**

3. Please consider this letter my formal request to become a party of record for any further actions in relation to this issue.

*Your name has been added to the interested party list that Ecology notifies for actions related to the Tesoro NPDES permit.*

4. I live directly across from the Tesoro Refinery. As such I am very concerned about the discharge of its waste water into Fidalgo Bay. However, because of the ebb and flow of tides, the waste water does not stay in Fidalgo Bay, it spreads to Padilla Bay, the Salish

Sea and beyond. I am in favor of the Court of Appeals ruling which decided that failure of a single Whole Effluent Toxicity (WET) test is a permit violation, if Ecology finds the test is not anomalous. This requires the refinery to investigate the toxicity. A failed WET test confirms that the effluent is lethal to fish species. It is necessary for this zero tolerance stance because fish and wildlife have zero tolerance.

*Comments noted.*

5. After reading the Tesoro permit document, I am alarmed and appalled to see the tons of pollutants Tesoro has been allowed to legally discharge annually into Fidalgo Bay.

It has previously been established by Washington state officials that Tesoro in Anacortes has the dubious distinction of being the fifth highest polluter in the state. As such I would hope that Ecology is involved in the investigation of failed tests, not just relying on the offending facility. I ask that any investigations and subsequent permit violations be made public.

*Tesoro's violation and enforcement records can be viewed in Ecology's Water Quality Permitting and Reporting Information System (PARIS). PARIS can be accessed by the public via the following link:*

<https://fortress.wa.gov/ecy/wqreports/public/f?p=110:1:6393075762758570>

*Ecology is working on a new version of PARIS that will include failed WET tests, the results of subsequent investigations, and any actions taken by Ecology.*

6. A recent article in The Seattle Times on Nov. 15, 2015 cited a new analysis of the inland waters of Washington and British Columbia published this fall. It puts the region's total number of varied fish species at 253, including 37 species never before documented in the Salish Sea. The Salish Sea covers 6,500 square miles and includes Puget Sound, the Strait of Juan de Fuca and the Strait of Georgia. It can reach depths of close to half a mile in places.

Closer to home, in Padilla Bay just south of Lummi Bay, there are 8,000 acres of eelgrass beds, salt marshes, tidal flats and upland fields. Padilla Bay is an important ecological area and is a treasured source of salmon, shellfish, Pacific herring, crabs and other wildlife. The heron colony on Fidalgo Island is one of the largest on the West Coast and the neighboring wet lands are foraging grounds for over 300 nests. There are numerous bald eagle nests. Eagles, plus herons, as well as other waterfowl use the bays to fish for food.

As a result of the pollutants previously discharged into Fidalgo Bay, local commercial and recreational crabbers have long known not to place crab pots in bay waters. Clamming is simply not done any longer except by the unwitting.

In conclusion, I am deeply concerned about the potential for accidents, oil spills and other devastating impacts that would negatively affect Anacortes, Skagit County, Whatcom County and the Salish Sea. The Department of Ecology is delegated by the EPA to implement the federal Clean Water Act and must also comply with federal rules to maintain the integrity of public waters. It stands to reason that a single WET test failure is a violation of water quality standard and, therefore, of the permit. It's time to protect the people and the environment. Do not let industrial polluters off the hook for Clean Water Act violations to accommodate polluters' economic interests. I am not willing to be collateral damage for Tesoro's economic benefit.

*Comments noted.*

#### **Comments from Ecology's Water Quality Program (7.)**

7. The BP Cherry Point Refinery commented that the wording in the WET permit conditions be clarified to state that anomalous test results shall not be used to determine compliance with a WET limit. The Water Quality Program agreed and is making changes to the acute and chronic WET conditions in the NPDES permit template that will apply to all industrial dischargers.

*The anomalous test results section in Condition S7. of Tesoro's permit was revised to make this clarification.*