

King County Industrial Waste Program

Response to Comments on Five Proposed Public Rules:

Industrial Waste Local Discharge Limits

Discharge of Construction Wastewater to the Sanitary Sewer System

Discharge of Contaminated Groundwater to the Sanitary Sewer System

Discharge of Cooling Water to the Sanitary Sewer System

Discharge of Hauled Waste at King County Publicly Owned Treatment Works

Formal Comment Period: August 10–September 23, 2020



King County

Department of
Natural Resources and Parks
Wastewater Treatment Division
Industrial Waste Program

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Introduction

The King County Industrial Waste Program (KCIW) recently updated and will renew five proposed public rules before they expire on January 11, 2021, per [Executive Order INF-7-3-EO](#). The five public rules are:

- Industrial Waste Local Discharge Limits (PUT-8-13-2-PR)
- Discharge of Construction Wastewater to the Sanitary Sewer System (PUT-8-14-1-PR)
- Discharge of Contaminated Groundwater to the Sanitary Sewer System (PUT-8-15-1-PR)
- Discharge of Cooling Water to the Sanitary Sewer System (PUT-8-16-1-PR)
- Discharge of Hauled Waste at King County Publicly Owned Treatment Works (PUT-8-22-1-PR)

In addition to early outreach efforts, which included conducting an informal public comment period to get initial feedback on the revised rules, KCIW initiated a 45-day formal comment period, as required by King County Code, that is part of the formal rulemaking process. The formal comment period officially began with a Notice of Intent to Adopt published in the *Seattle Times* on August 10, 2020; the comment period concluded on September 23, 2020. During the formal comment period, KCIW accepted comments by voicemail, mail, email, and Public Input (a County government engagement platform). On September 2, 2020, KCIW captured oral comments during a formal hearing hosted on a video conferencing platform.

In all, KCIW received five written comments and two oral comments during the 45-day formal comment period. This document presents these comments as well as KCIW's response to each comment. The comments and associated responses in this document are organized according to each of the five public rules; there is also a section for general comments and questions received pertaining to the five public rules. All comments are transcribed verbatim.

General Comments & Questions

Robert Elwell, City of Auburn

Submitted via email, September 23, 2020

Comment 1:

How do the proposed rules differ from the existing rules? Are they completely re-written, or just some changes and clarification? A redline-strikeout version would have been much easier to review.

KCIW Response:

For the Discharge of Cooling Water to the Sanitary Sewer System, the proposed rule is essentially the same as the existing rule.

The proposed King County Industrial Waste Local Discharge Limits rule generally mimics the existing rule with the exception of fats, oils, and grease (FOG), settleable solids, and hydrogen sulfide. Regarding FOG, the proposed rule (a) stipulates the minimization of emulsifying agents such as cleaners, (b) adds a new section that allows for the development of aqueous-based limits for polar FOG or total FOG based on the concentration that is achievable through implementation of all known available and reasonable treatment, and (c) removes FOG control plans as local discharge limits, and instead describes this type of plan in the Industrial Waste Procedures Manual and requires some industrial users to submit FOG control plans via discharge authorizations and compliance orders. The definition of "settleable solids" was revised based on an internal comment prior to the formal comment period from the King County Environmental Lab. As for hydrogen sulfide, the short-term limit and the 8-hour limit are based on Chapter 296-841 of Washington Administrative Code and relate to occupational health thresholds, while the inclusion of a new weekly limit was established to protect against corrosion of materials in the sanitary sewer system. In other places in the proposed rule, clearer definitions are provided.

The Enforcement Response Plan (ERP) previously existed as a rule, but now will be its own standalone document. This will allow KCIW more flexibility to update its procedures, as necessary. This approach and the new ERP document were approved by the Washington State Department of Ecology (Ecology) on September 2, 2020. As for the three other proposed rules (Discharge of Construction Wastewater to the Sanitary Sewer System, Discharge of Contaminated Groundwater to the Sanitary Sewer System, and Discharge of Hauled Waste at King County Publicly Owned Treatment Works), they represent complete rewrites of the existing rules. Because of the differing amounts and types of revisions across the rules, KCIW did not present redline-strikeout versions. However, KCIW made a presentation to Metropolitan Water Pollution Abatement Advisory Committee on Wednesday, August 26, 2020, to summarize and explain the proposed revisions. Additionally, a preliminary informal comment period was open between May 4 and May 17, 2020, in which local sewer agencies were encouraged to comment on the revised rules in addition to the formal comment period.

Comment 2:

Are these rule changes just for businesses that have industrial permits, or are the component agencies expected to enforce these rules on King County's behalf?

KCIW Response:

The proposed rules are for the King County Industrial Waste Program, as a delegated pretreatment program, to implement and enforce per King County Code 28.84.060. The component agencies are not expected to enforce these rules.

Industrial Waste Local Discharge Limits (PUT-8-13-2-PR)

Dale White, Terex Corporation

Submitted via Public Input Tool, August 10, 2020

Comment:

Reading the proposed rule it is not much different than the current rule. I would be ok with the proposed change as I don't see any impact on our current operations or permit. The only comment is on non-polar FOG verses HEM reporting. Typically the reporting is based on HEM testing and if it is over 100mg/L then testing is conducted to quantify polar FOG. Generally when you test for HEM it gives you both polar and non-polar FOG and to separate and quantify the result an additional more expensive test is required. Rational is if you don't have enough Hexane Extractable Material to reach 100mg/L the next test would be less than 100mg/L and therefore no reason to test for polar FOG. Greater than 100mg/L then there is a chance to have a polar FOG result that may reach or exceed the 100mg/L limit. It is still however possible to be under for both Polar and non-polar FOG when non-polar FOG is called out.

KCIW Response:

The discharge of industrial wastewater containing FOG continues to be regulated as a local limit in the proposed rule at 100 mg/L for non-polar (petroleum or mineral) FOG. The currently approved analytical method is U.S. Environmental Protection Agency Method 1664B (n-Hexane Extractable Material [HEM; Oil and Grease] and Silica Gel Treated n-Hexane Extractable Material [SGT-HEM; Non-polar Material] by Extraction and Gravimetry). The HEM method analyzes for total FOG (i.e., polar and non-polar). As indicated, if the HEM analysis is less than 100 mg/L, there is no need to treat the HEM extract with the silica gel treatment column step to derive the non-polar FOG (SGT-HEM) result. For several industrial facilities, analysis by HEM is consistently below 100 mg/L, so they can often benefit by only performing the simpler HEM test. However, for the occasional exceedance of 100 mg/L HEM, the SGT-HEM analysis can be performed to ensure the 100-mg/L non-polar FOG limit is met.

Robert Elwell, City of Auburn

Submitted via email, September 23, 2020

Comment 1:

How (and by whom) will the need for FOG discharge limits be determined? Are they individualized, or will they be applied to all dischargers?

KCIW Response:

The proposed rule retains the 100-mg/L for non-polar FOG limit as in the previous rule. The default discharge limit for polar FOG dischargers will continue to be the narrative limit of minimizing free-floating polar FOG. The ability to set site-specific numeric polar FOG limits in the proposed rule is a contingency for individual companies, or for a set of companies in a particular industry, where the narrative floatable polar FOG limit has limited effectiveness in regulating the discharge. This would primarily be for circumstances where polar FOG at an industrial facility is highly emulsified and later causes FOG-accumulation problems in downstream sewer pipelines or lift stations. King County local discharge limits, including polar and non-polar FOG, apply to all industrial users.

Comment 2:

How will new FOG discharge limits be publicized?

KCIW Response:

If a numeric polar FOG limit is developed, per King County Code and the proposed Local Limits Rule, KCIW will conduct an analysis that the Wastewater Treatment Division director approves. If a particular permitted industrial facility requires a numeric polar FOG limit, this will be incorporated in the draft permit that the industrial facility and local sewer agency will be given an opportunity to review and appeal, if desired.

Comment 3:

Could FOG testing be required for any non-permit-holders?

KCIW Response:

KCIW may sample non-permit holders for FOG, but, if FOG testing is required by industrial users, then it will be stipulated in an industrial user's waste discharge permit.

Comment 4:

What will trigger the requirement for a FOG Control Plan?

KCIW Response:

FOG control plans are typically required for food processing facilities that generate polar FOG. Even though they are occasionally used for non-polar FOG of mineral or petroleum origin, they are usually only used when operational best management practices are important for controlling the discharge of non-polar FOG. Typically, non-polar FOG dischargers are evaluated based on having an appropriately sized oil-water separation device, which is often sufficient.

Discharge of Construction Wastewater to the Sanitary Sewer System (PUT-8-14-1-PR)

Robert Elwell, City of Auburn
Submitted via email, September 23, 2020

Comment 1:

'Pumping' is in the definition for Construction Wastewater, but depending on the site, pumping may not be involved.

KCIW Response:

Your point is noted. The definition in the public rule is intended to simply mean the act of moving the stormwater or construction wastewater away from the active construction site. It is not meant to imply that pumping be a condition of the site or that a physical pump is required.

Comment 2:

Who determines that NPDES requirement cannot be feasibly met?

KCIW Response:

The Washington State Department of Ecology is the agency tasked with issuing and monitoring the general and individual construction stormwater permits.

Comment 3:

What will KCIW want to see to verify pre-approval from local Jurisdictions?

KCIW Response:

In order to verify pre-approval from the local public agency, KCIW would like to know the contact name at the local sewer agency (LSA) who granted approval to discharge into the local sewer infrastructure, the discharge location(s), and maximum discharge rate(s) in gallons per minute. The KCIW construction application specifically requests the applicant contact the local sewer agency where a discharge is requested and to include the above information. The applicant must receive approval for a point of discharge and a flow rate from the LSA before submitting the construction application to KCIW for permitting. If the LSA determines that the discharge will overwhelm the LSA's local lines, or has another concern related to the discharge, the LSA can deny the request. KCIW will not authorize discharge to the LSA's and County's sewer systems without approval from the respective LSA.

Comment 4:

It is not clear when an applicant applies for temporary relief permits. Is it before wet season, or at the time the discharge is to be made?

KCIW Response:

The primary reason an industrial user requests "relief" to discharge to the sanitary sewer system is when a discharger fails to meet the limits or other requirements of the Washington State Department of Ecology's construction stormwater permit for stormwater or groundwater discharges to waters of the state. The temporary "relief" clause is typically included in KCIW's original discharge authorization for a project. (Certain types of construction wastewater, like process water, are not allowed to be discharged

to waters of the state; hence, the need for a KCIW discharge authorization.) “Relief” is granted for a maximum of 14 days, which allows the project owner enough time to get the stormwater or groundwater discharges back into compliance with Ecology’s permit requirements (usually through additional treatment). The request for temporary relief is made only on an as-needed basis during the course of a project. Relief requests typically occur during the wet season, but the requests must be justified. Relief requests may be denied based on a number of factors, including insufficient sewer capacity, inadequate treatment, or improper implementation of best management practices.

Brian Husmillo, City of Issaquah

Submitted verbally via virtual public hearing, September 2, 2020

Comment:

The following comment refers to the Discharge of Construction Wastewater to the Sanitary Sewer System. The City of Issaquah continues to experience rapid growth and development within the City. The need and desire for protecting our MS4 and receiving waters, while trying to maintain our NPDES permit compliance continues to be a high priority for City staff and the community. More often than not, the City finds development and CIP (Capital Improvement Projects) experiencing TESC issues around turbidity exceedances (particularly during the wet weather months of the year). While there is a priority and immediacy to get the site under storm and groundwater runoff compliance, there can be potential barriers that don’t always make it feasible to get the site under control in the amount of time desired. In an effort to protect water quality and mitigate downstream impacts, the City of Issaquah would like to have more flexibility and authority to allow the immediate/temporary relief to sanitary sewer if discharge limits aren’t being met under City code and under the Washington State Department of Ecology’s construction stormwater general permit, all while the site is working to come back into compliance. Having been in and understood the nature and level of service that Industrial Waste strives to provide, this would allow decisions to be made with the best available information at the time from the LSA (since part of the approval process involves review and approval from the LSA) and alleviating the immediate need for IW staff to drop everything to address the concern. Additionally, as part of the developers and CIP requirements, a preparation of a sewer discharge plan would be required as part of the their TESC Plan, should issues arise. The plan would need to include everything as required under Section B subpart 2 of this rule.

KCIW Response:

The proposed rule requires industrial users, when feasible, to apply for construction stormwater permits through the Washington State Department of Ecology (Ecology) for authorization to discharge construction dewatering water from construction sites to the stormwater drainage system or to the ground. KCIW advises industrial users to simultaneously apply to KCIW for an authorization to discharge construction process water to the sanitary sewer system and for construction dewatering water for instances when the construction stormwater permits conditions are not being met.

Regarding flexibility, KCIW’s discharge authorizations for construction wastewater include a special section for temporary “relief” to discharge stormwater and groundwater to the sanitary sewer system. The specific requirements and conditions of invoking the relief option are listed in the special conditions of the permit or authorization. One such condition is that the duration of the relief is for a maximum of 14 days. Also, in order to invoke the relief option, the permittee must provide evidence (during the permitting process) that the treatment system proposed, or other pollution prevention activities used to

comply with the Ecology construction stormwater permit, is in line with the requirements of the Western Washington Stormwater Manual and meets all known and reasonable treatment. Evidence of this would be a statement by a professional engineer sufficiently familiar with the design and construction of the site pollution prevention best management practices (BMPs).

The City of Issaquah's comment implies a request for immediate relief to discharge to the sanitary sewer system. While KCIW agrees with the city in terms of the importance of meeting your MS4 requirements and protecting water quality, we cannot grant an immediate relief provision to the local sewer agency in the rule. This is because KCIW needs time to verify that sewer capacity is available from the emergency discharge volume, confirm that local and regional assets are protected, and ensure that a good faith effort was made to implement BMPs and install proper treatment. The request for relief must not be due to improper or lack of maintenance, or negligence by the discharger. KCIW is concerned that if an immediate relief provision was instituted, we would not have the ability to verify sewer capacity, BMPs, and treatment. We believe that industrial users would take advantage of the immediate option to discharge to the sanitary sewer. Instead, KCIW believes that if the industrial user's initial temporary erosion and sediment control (TESC) measures are prioritized and adequately implemented, then immediate relief is not necessary.

Lastly, the city commented on the preparation of a sewer discharge plan as part of their TESC plan. As noted above, the industrial user should apply for a KCIW discharge authorization for purposes of discharging process water to the sanitary sewer system. KCIW believes that it is a good idea to plan for contingencies in terms of relief, but that relief should not be viewed as the primary option for construction dewatering water.

Julie Howell, Seattle Public Utilities
Letter submitted via email, September 23, 2020

Comment 1:

Definition Coordination Between King County Code and the Public Rules

Some of the definitions in the Public Rules cite a King County Code Section and then include additional language. Where the Code definition is quoted in the Public Rule, and then additionally described, it would help to have the Public Rules identify any definition, or parts of definitions, that are only in the Public Rule and not in the Code. In some instances, if part of the definition from the Code is included in the Public Rule, including the entire definition from the Code would clarify the Public Rule.

KCIW response:

We have added language to all the public rules to clarify when a definition, or part of a definition, is based on King County Code or when it is exclusive to the rule. We have also double-checked to ensure that definitions provide enough context for the reader in instances where part of a definition from King County Code, rather than the entire definition, is included in the rule.

Comment 2:

PUT-8-14-1-PR The Discharge of Construction Wastewater to the Sanitary Sewer System

Section III B. states that all industrial users proposing to discharge construction wastewater must take the enumerated steps of getting approval from the local sewer agency and KCIW. This language does not distinguish between large and small construction projects.

In previous years Seattle has used the following guidance to determine whom to direct to King County Industrial Waste for Construction Discharges:

- Deep excavations (greater than 12 feet)
- One (1) acre or more of land disturbing activity
- If continuous flow surface water, such as a stream, and/or groundwater is anticipated to be encountered during construction activity
- Disposal of contaminated temporary surface and/or groundwater during construction
- Single Family Projects do not require King County authorizations

It is not clear whether this guidance will still apply and if it will be spelled out outside of the Rule.

KCIW response:

KCIW will be glad to work with Seattle Public Utilities (SPU) in clarifying who should approach KCIW for a discharge authorization. Criteria for who should receive a KCIW discharge authorization are typically described in our Industrial Waste Procedures Manual and communicated on our webpages. In general, SPU should direct all commercial construction projects that intend to discharge construction wastewater, as that term is defined in the rule, to KCIW for a County discharge authorization. Single-family residential projects do not require a KCIW authorization. With the advent of the general letter of authorization for construction sites a few years ago, KCIW has been permitting construction sites that are less than 1 acre.

The proposed rule applies to entities requesting KCIW discharge authorizations to discharge construction wastewater, including process wastewater, to the sanitary sewer system, irrespective of construction site size. Most construction sites have process water that is prohibited from being discharged to waters of the state, and thus require a KCIW discharge authorization. Consistent with past practices, KCIW requires applicants for commercial construction projects to consult with and receive approval from their respective local sewer agency (LSA) before submittal of the appropriate application to KCIW. KCIW requires that the applicant specify the LSA-approved point(s) of discharge, flow rate(s) in gallons per minute, and an LSA contact name. This information is requested in KCIW's construction applications and must be documented in the KCIW application so that KCIW can proceed in processing the authorization.

Comment 3:

PUT-8-14-1-PR The Discharge of Construction Wastewater to the Sanitary Sewer System and PUT-8-15-1-PR Discharges of Contaminated Groundwater to the Sanitary Sewer System

The definition of “industrial user” as a source or potential source of indirect discharge seems difficult to follow. The King County Code definition includes the reference to discharges regulated by the Clean Water Act but that reference is left out of the definition in the Public Rule. Particularly since the term indirect discharge is not generally used to refer to Clean Water Act regulated discharges, including the reference to the Clean Water Act in the Public Rule would be helpful.

KCIW response:

The definition of “indirect discharge,” “waste discharge,” or “discharge,” as defined in King County Code 28.82.350, has been added to the Discharge of Construction Wastewater to the Sanitary Sewer System rule. This definition has references to the Clean Water Act. Additionally, the definition for “Industrial user” is now consistent in both rules.

Mark Menard, Sound Transit
Submitted via email, September 22, 2020

Comment 1:

Dear Mr. Henley:

In response to King County's request for formal comment regarding the proposed changes to the above –referenced PR, Sound Transit offers the following:

Sound Transit recommends that King County more clearly define within Public Rule PUT 8-14 the terms "Discharger" and "Industrial User" to include construction contractors, the operators who are most directly responsible for the management, treatment, and ultimate introduction of waste water originating from construction dewatering activities into the King County conveyance system. This would clarify their responsibilities specified in Section 8 ("Responsibilities") of this Rule: "Dischargers of water from construction dewatering activities are responsible for obtaining discharge authorizations from King County prior to discharge".

For many years, the prime contractors on Sound Transit's large capital construction contracts have assumed the status of Permittee under the Department of Ecology's NPDES program [specifically the General Construction Stormwater Permit (GCSWP)]. ST's prime contractors are familiar with, and responsible for, the provisions of this Public Rule that intersect with the NPDES program:

- 6.1.8 "To encourage persons conducting construction dewatering to contact the Department of Ecology to obtain authorization to discharge to the surface waters".
- 7.2.3 "Demonstrate to King County's satisfaction that discharge to state waters has been previously approved by WSDOE, but a King County discharge authorization is requested for emergency discharge only".

It makes sense therefore that the prime construction contractors also assume the responsibility of directly obtaining discharge authorization under the County's program inasmuch they are already providing the required demonstrations and certifications that they have consulted with Ecology under the NPDES program and have developed the knowledge and sophistication to implement controls necessary to comply with the permit requirements.

In 2016, King County Industrial Waste (KCIW) agreed to a proposal from Sound Transit to initiate a pilot project which enabled KCIW to issue an industrial waste permit directly to the primary construction contractor for one of the contracts on the East Link Extension project. This constituted a change in the permitting protocol which the County has historically followed and represented an opportunity for Sound Transit and KCIW to streamline the industrial waste permitting process while significantly strengthening environmental compliance by assigning direct responsibility for compliance with the King County Code to the prime contractor on this construction segment. Using Sound Transit's permitting history under the NPDES discharge program as a model, Sound Transit and KCIW staff anticipated an improvement in the contractor's awareness of its role in meeting permit conditions and a strengthened ability (and motivation) during the bid preparation period to forecast the resources necessary for ensuring and maintaining compliance. ST and Ecology have learned from the NPDES program that the direct assignment of a GCSWP to the contractors serves notice of the ultimate responsibility they hold through their control of the construction operations, schedule, means and methods, and thereby

strengthens their overall environmental compliance program. Review of the compliance history of the contractor permitted under the pilot program reveals an outstanding compliance record. The monthly Self-Monitoring Reports (SMRs) indicate that at no time have any of the effluent limitation parameters been exceeded; less than a quarter of the allowable water volume available for discharge under this permit has been discharged. To date KCIW staff have visited the construction site five times to conduct field inspections, which involved a visual monitoring of the treatment systems, discharge locations and associated required onsite plans and documentation, as well as collection of samples of waste water from the discharge points. Each of the inspections were able to conclude that the relevant permit was "...in compliance with discharge limits".

Overall, the compliance history with regard to the KCIW-permitted discharges for the pilot program has been outstanding - a bright spot on what has proven to be a very challenging construction segment of the East Link Extension Project. Assigning direct permit responsibility to the contractor has incentivized the contractor to make good economic decisions regarding disposal of construction water when there is an option for use of either the stormwater or sanitary systems. The pilot program has shown that when responsibility for both permits resides with the contractor on a bid basis the costs are built into the bid and handling and disposal decisions will be based on the lowest cost, subject to permit conditions. By assuming the role of "Permittee" contractors develop an economic interest in complying with permit conditions, as non-compliance could result in loss of the ability to discharge under the KC IWP, leaving them with more expensive alternatives for disposal of dewatering waters.

Under the pilot program Sound Transit's monitoring of contractor wastewater discharges did not decrease. We continued to emphasize management oversight for the duration of the pilot project to ensure that our current record of environmental compliance is maintained. Implementation of this approach did not require any additional resource burden to KCIW staff. Sound Transit's Construction Management team has continued to work closely with the contractor to review plans, provide technical assistance, and to provide daily field oversight.

The King County Code, Chapter 28, Section 28.81.020, Statement of policy, contains the following statement: "In carrying out this policy, the objectives of this chapter are:...To implement an enforcement response plan aimed at achieving compliance in the shortest time frame possible and promoting responsibility of the industrial user to be in compliance..."

Sound Transit believes that the objectives stated above will best be achieved by clarifying the definitions of "Discharger" and "Industrial User" to enable prime construction contractors, the parties directly responsible for the generation, treatment and discharge of construction dewatering waters, to obtain the appropriate authorizations from KCIW for all discharges authorized under Public Rule PUT 8-14.

As stated, our goal, like yours, is achieving environmental compliance, and allowing the contractor to be the permit holder will better achieve this goal. We have proposed a specific pathway to amending your rules to accomplish this, but are open to other suggestions on rule changes or other avenues that will lead to this result.

We appreciate your time in reviewing this request and look forward to continuing the discussion with your team. Please do not hesitate to contact us with any questions.

Sincerely,

Mark Menard, L.H.G.

Deputy Director of Environmental Compliance Sound Transit

cc: Perry Weinberg, Terry Beals

KCIW Response:

Thank you for your comments. We appreciate you taking the time to relay your concerns and recommendations in detail.

KCIW drafted the proposed rule to cover a range of project sizes and to be applicable to all public agencies. It is written to encompass projects for larger agencies, such as Sound Transit, the Seattle Department of Transportation (SDOT), and Washington State Department of Transportation (WSDOT), as well as projects for smaller local public works departments. KCIW believes that including language in the proposed rule that designates the contractor to assume complete environmental ownership (and liability) does not necessarily align with these other agencies nor produces the best environmental outcomes.

Similarly, what has worked for the Washington State Department of Ecology (Ecology) under their general construction stormwater permit does not necessarily work for KCIW for construction wastewater permitting. Although Ecology and KCIW are both regulators, we each have different roles and responsibilities, as you are aware. Ecology regulates discharges to protect the environment, whereas KCIW is a regulator for a public utility to protect and maintain WTD's infrastructure and assets and to ensure water quality and biosolids quality at ratepayers' expense. This means that there are different resource levels and demands, permitting approaches, and obligations between the two entities.

KCIW strongly believes that issuing the permits to project owners, like Sound Transit, firmly establishes an overall responsibility, creates an institutional environmental management perspective that can be passed down within a given structure from project to project, and results in better outcomes. As such, one of our main concerns with issuing the permit to the contractor is that the project owner will no longer be responsible for nor have as much of a vested interest in environmental compliance. Under this arrangement, project owners are not liable for environmental problems and may absolve themselves when issues arise.

KCIW respectfully disagrees with Sound Transit's statement that the contractor, as permit holder, will have better environmental compliance than the project owner. Historically, this has not been the case. While Sound Transit has greatly improved its compliance record, there still have been some compliance issues associated with the agency's contractors, even when they were informed of the permit conditions ahead of time.

It is important to note that KCIW fines are not punitive to a contractor on a multimillion-dollar project. Additionally, the publication of the contractor's name in the newspaper for significant noncompliance status is not a significant deterrent for contractors, especially those that are not based in King County or Washington state. However, when a public agency is the project owner, there is more of a commitment to compliance to uphold its environmental reputation. As a point of clarification, the loss of a KCIW

permit to discharge to the sewer is extremely rare and noncompliance rarely involves the revocation of the permit.

Regarding the contractor making economic decisions for the disposal of construction wastewater to either the sanitary sewer or to the receiving water, this disposal should be based on environmental rules and benefits rather than the contractor's cost incentive. Contractors will almost always prefer to discharge to the sanitary sewer system because it is a less expensive alternative than treating the construction dewatering water to meet water quality standards and discharging it to surface waters. The contractor's preference is problematic and contrary to (a) Ecology's position that stormwater and groundwater be kept in basin and discharged to ground or surface waters after treatment whenever possible and (b) WTD's goal to keep stormwater and groundwater out of the sanitary sewer system to the maximum extent possible, thereby preserving local and regional sewer capacity and minimizing pumping and treatment costs. WTD is accountable and has an obligation to minimize costs to its ratepayers. Discharge of relatively clean water to the sanitary sewer rather than to surface water bodies via the storm sewer is contradictory to our goal of minimizing conveyance and treatment costs to ratepayers.

Based on our experience issuing permits to contractors, KCIW does not believe this practice "streamlines" the permitting process. KCIW had to expend extra resources in terms of staffing and time explaining the permit application process and form. Additionally, once a project was under construction, KCIW expended a significant amount of additional time training and providing outreach on the terms and conditions of the permit to all the different contractors on various construction projects. When KCIW issues permits to project owners, this extra effort is minimized. In short, Sound Transit's proposal shifts the workload and environmental management burden from the project proponents to limited KCIW staff capacity.

KCIW acknowledges the success of the E-320 pilot project and believes it was due, in large part, to dedicated resources, heightened awareness and oversight, and a high degree of supervision. Continuation of the pilot project for Sound Transit will yield similar results because there is a large motivating factor for it to be successful. KCIW does not believe it is prudent to use the compliance record of this one pilot project to be representative of all future projects, especially if issuing permits is routinely done and for other public entities besides Sound Transit. Because the public rule applies to all public agencies within King County's service area (e.g., SDOT, WSDOT, etc.), not just Sound Transit, it is unlikely that other projects will have the same level of resources and oversight. Although KCIW is not advocating for nor advancing another pilot project, a more representative project would be to randomly issue the permit to a contractor on a large, complex linear construction project other than a Sound Transit project to better assess outcomes with the proposed model.

Lastly, even when the permit is issued to the project owner, the project owner currently can still delegate most environmental management responsibilities of the site (monitoring, reporting, treatment, operations, etc.) to the construction contractor, while still being accountable for overall environmental compliance. Further, the current process that Sound Transit has employed on non-pilot projects, whereby an environmental consultant applies for a permit application on behalf of Sound Transit, can continue to be performed. Indeed, Sound Transit may still apply for and obtain a KCIW permit before the bidding

process and make it part of the construction contract documents, specifying that the successful bidder is responsible for the implementation of KCIW permit requirements. This would allow for bidders, during the bid preparation period, to forecast the resources necessary and include them in their bid price, and put them on notice that they are responsible for the implementation of environmental compliance.

Mark Menard, Sound Transit

Submitted verbally via virtual public hearing, September 2, 2020

Comment 2:

Good afternoon, I am Mark Menard, Deputy Director of Environmental Compliance for Sound Transit. I would like to express our appreciation for the opportunity to comment on the Draft Rule for Discharge of Construction Wastewater to the Sanitary Sewer System. We have previously filed some informal comments with KCIW earlier in this process and anticipate providing a more comprehensive written response by the 23rd of September.

Over the past twenty years, Sound Transit and the permitting group of King County Industrial Waste have developed a collegial working relationship with regard to the handling of construction wastewater. Most recently, we jointly developed a successful pilot program on our East Link Extension project that allowed for an innovative approach to permitting the discharge of construction process water. This program allowed the prime contractor on one of our contracts to directly obtain the requisite IWD permits for their contract segment. The compliance history under this pilot program was excellent and we look forward to extending the program onto future Sound Transit projects. We believe that clarification within the draft rule will assist in that goal.

The construction contractor is responsible for the design, operation and monitoring of the collection, treatment and discharge systems for stormwater and groundwater from the construction site, as well as for the management of construction process and wastewater. Currently, construction contractors have the ability to be named as permittees under the Construction Stormwater General Permit through Ecology's NPDES program. This is a process that Sound Transit developed jointly with the Department of Ecology and it has proven to have successfully increased contractor compliance and lowered construction costs. Similarly, in those parts of King County where the POTWs for sanitary discharges are run by local entities, other than KCIW, contractors are required to apply directly to the POTW for discharge permits to the conveyance and treatment systems. Under these programs, the construction contractors are appropriately considered to be the "industrial users" by the Department of Ecology and the local POTW.

Right now, there is nothing in the current definition of "industrial user" as spelled out in draft rule of Chapter 28.84 that would preclude KCIW from interpreting the definition to include construction contractors. It is logical that they be included. However, current practice within the division does not allow contractors from obtaining the permits directly and requires project owners to obtain and maintain permittee status. In our experience, this results in costly inefficiencies with no improvement in permit compliance, and we look forward to expanding on these details in our written comments.

It is our recommendation therefore that the draft rule be amended to clearly state that the definition of "industrial user" includes construction contractors for the purpose of obtaining and maintaining industrial waste discharge permits under this rule.

Thank you.

KCIW Response:

Thank you for your comments. KCIW also appreciates the collegial working relationship with Sound Transit that has been established over the past 20 years.

It is KCIW's experience that issuing permits directly to contractors leads to an increase in noncompliance and associated enforcement actions. Therefore, KCIW respectfully disagrees with Sound Transit's assertion that there is no difference in compliance when the permit is issued to the project owner versus the construction contractor. Because the proposed rule applies to all public entities, not just Sound Transit, and given the multitude of construction projects in the King County service area, issuing the KCIW permits solely to contractors will create an unnecessary burden on KCIW staff. Specifically, when construction contractors are allowed to obtain and maintain industrial waste discharge permits, and not project owners, this results in extensive education and outreach efforts by KCIW staff to train contractors on the terms and conditions of the permits. Moreover, KCIW does not believe that construction contractors should be specifically listed as "industrial users" in the rule. We believe this sets an unworkable precedent for KCIW staff and results in increased noncompliance by contractors.

Discharge of Contaminated Groundwater to the Sanitary Sewer System (PUT-8-15-1-PR)

Robert Elwell, City of Auburn
Submitted via email, September 23, 2020

Comment:

What will KCIW want to see to verify pre-approval from local Jurisdictions?

KCIW Response:

In order to verify pre-approval from the local public agency, KCIW would like to know (a) the contact name at the local sewer agency (LSA) who granted approval to discharge into the local sewer infrastructure, (b) the discharge location(s), and (c) maximum discharge rate(s) in gallons per minute. The KCIW construction application specifically requests the applicant contact the LSA where discharge is requested and to include the above information. The applicant must receive approval for a point of discharge and a flow rate from the LSA before submitting the construction application to KCIW for permitting. If the LSA determines that the discharge will overwhelm the LSA's local lines, or has another concern related to the discharge, the LSA can deny the request. KCIW will not authorize discharge to LSA's sewer system without approval from the respective LSA.

Discharge of Cooling Water to the Sanitary Sewer System (PUT-8-16-1-PR)

Greg Galloway, Alderwood Water & Wastewater District

Submitted via email, September 23, 2020

Comment:

Request to add: Receive approval to discharge cooling water to the sanitary sewer system from their respective local public agency before submitting an application to KCIW.

KCIW Response:

KCIW, through the implementation of this public rule, will be conditionally approving the discharge of cooling water to the sanitary sewer system. The rule does not require that dischargers of cooling water submit an application to KCIW. Accordingly, KCIW will not be issuing discharge authorizations for cooling water because we believe that cooling water does not pose a significant risk to the publicly owned treatment works. However, KCIW's belief does not preclude or prevent local public agencies from requiring that dischargers of cooling water seek their discharge approval. This needs to be accomplished through a local ordinance or rule. King County rules are not the correct format for establishing local public agencies' discharge approval requirements.

Discharge of Hauled Waste at King County Publicly Owned Treatment Works (PUT-8-22-1-PR)

No formal comments were received on the proposed public rule, Discharge of Hauled Waste at King County Publicly Owned Treatment Works, during the public comment period.