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Via US Mail and Email

**RE: Weyerhaeuser Longview NPDES Permit Renewal – Individual NPDES Permit
WA0000124**

Dear Mr. Yamazaki,

Columbia Riverkeeper (Riverkeeper) submits these comments on the Washington Department of Ecology's (Ecology) proposed National Pollution Discharge Elimination System (NPDES) Permit WA0000124 for the Weyerhaeuser Longview Mill Facility (hereinafter, the "Draft Permit") and the accompanying Fact Sheet.

Riverkeeper's mission is to protect and restore the Columbia River and all life associated with it, from its headwaters to the Pacific Ocean. Riverkeeper represents over 7,000 members and supporters in Oregon and Washington and regularly comments on decisions impacting water quality in the Columbia River. Riverkeeper's members boat, swim, and consume fish from the Columbia River at and downstream from Longview, Washington.

The Weyerhaeuser Longview mill is a significant industrial point source on the lower Columbia River. Conventional, toxic, and stormwater pollutants from the Weyerhaeuser Longview mill have the potential to seriously harm human and environmental health in the Columbia River Estuary. The sheer mass of pollutants that the Draft Permit would allow Weyerhaeuser to discharge into the Columbia is significant by any measure. From the pulp mill's process water outfall alone, every year the mill discharges:

- 9.8 million pounds of Biological Oxygen Demand,
- 15.9 million pounds of Total Suspended Solids, and
- 3,796 pounds of Chloroform.

Additionally, the sanitary wastewater treatment plant discharges an unlimited total amount of Biological Oxygen Demand, Total Suspended Solids, and Fecal Coliform Bacteria. The dioxins and furans in the mill's effluent are among the most toxic pollutants ever tested on fish, and are especially harmful to juvenile salmon and steelhead. Because this permit may govern the mill's

discharges for the next decade, Ecology's permitting decisions will have a significant and lasting effect on the water quality and environmental health of the Columbia River Estuary.

Riverkeeper appreciates Ecology's willingness to answer questions during the public comment period. Based on the issues and concerns articulated below, Riverkeeper requests a meeting with Ecology to further discuss the upcoming permitting decision.

I. Weyerhaeuser's Toxic Discharges May Harm Endangered Salmon and Steelhead.

The discharges from Weyerhaeuser's pulp mill and associated facility contain toxic substances such as dioxins, furans, phenols, chloroform, cyanide, PCBs, and toxic metals. While Ecology proposes technology- and TMDL-based effluent limits for some of these pollutants, the Draft Permit and Fact Sheet do not adequately analyze factors like biomagnification, additive toxicity, and multiple exposure pathways that impact how toxic pollutants actually affect aquatic organisms. Accordingly, the levels and types of toxic pollution authorized by the Draft Permit may harm the Columbia River's Endangered Species Act-listed salmon and steelhead, and people who eat locally-caught fish.

Ecology should revise the permit and Fact Sheet to explain and ensure that toxic pollution from Weyerhaeuser's facility will not violate Washington's narrative water quality standards, which protect beneficial uses of the Columbia River like salmon and steelhead survival and human fish consumption. WAC 173-201A-510(1); WAC 173-201A-240. If a discharge may have the reasonable potential to violate a narrative water quality standard, Ecology must set a corresponding water quality-based effluent limit to ensure that such a violation does not occur. 40 C.F.R. 122.44(d)(1)(i); WAC 173-201A-510(1). Washington's narrative water quality standard for toxic pollution requires that toxic substances in a discharge not have the potential, either singularly *or cumulatively*, to harm sensitive aquatic life like salmon and steelhead, or adversely impact characteristic water uses like fish consumption, or otherwise adversely affect public health. Ecology, *Water Quality Program Permit Writer's Manual* (2011) at VI-4 (citing WAC 173-201A-240). Accordingly, the limits on toxic pollution in the permit must be at least sufficient to protect salmon and steelhead, and people who eat them. It is not clear that Ecology has fully considered the impacts of toxic pollution from Weyerhaeuser's discharge or set effluent limits that will protect salmon and steelhead or fish eaters. Accordingly, the effluent limits in the Draft Permit may authorize toxic discharges that violate the narrative water quality standards, in violation of 40 C.F.R. 122.44(d)(1)(i) and WAC 173-201A-510(1).

Ecology fails to account for important information about how toxic pollutants in Weyerhaeuser's discharges actually reach and affect salmon, steelhead, and other aquatic life. The water concentration of a toxic pollutant at the edge of a mixing zone is only one aspect of how that pollutant will impact aquatic life. The Fact Sheet should explain how bioaccumulation and biomagnification of extremely toxic pollutants such as dioxins, furans, phenols, and PCBs in Weyerhaeuser's discharges will impact aquatic organisms. The Fact Sheet should also account for the additive toxic effects of 2,3,7,8 tetrachlorodibenzodioxin and tetrachlorodibenzofuran and their multiple toxic congeners. Because these toxic substances all impact aquatic organisms

through the same molecular mechanism, Ecology must consider the impacts of these pollutants cumulatively when deciding whether the proposed effluent limits will actually protect aquatic life.¹ Ecology's final public Fact Sheet should, at a minimum, explain how Ecology has addressed these issues.

Data in the Fact Sheet indicate that Weyerhaeuser discharges levels of dissolved copper and zinc that are toxic to salmon and steelhead, but the Draft Permit does not include any effluent limits for these pollutants. Copper and zinc can severely damage the olfactory capabilities of salmon and steelhead, even at relatively low concentrations, and be fatal at higher concentrations. The Fact Sheet, at pages 17 to 30, indicates that effluent from Weyerhaeuser's outfalls 001, 002, export dock, cargo dock, and stormwater ditch 001/002 all occasionally (and possibly even on average) contain zinc and or copper concentrations above the levels known to cause harm to threatened and endangered salmon and steelhead.

Ecology's Fact Sheet does not address these issues. Ecology cannot authorize discharges that would violate the applicable water quality standards—including narrative water quality standards—that protect beneficial uses like aquatic life and fish consumption. 40 C.F.R. § 122.44(d)(1)(i); WAC 173-201A-510(1); WAC 173-201A-240. Based on the discussion above, it is not clear that the proposed effluent limits that will protect salmon and steelhead or comply with federal and state requirements.

Ecology has an additional, independent legal obligation under the federal Endangered Species Act (ESA) to ensure that activities authorized by NPDES permits to not “take” ESA-listed species. 16 U.S.C. § 1538(a)(1)(B); 50 C.F.R. § 222.102; *see also Loggerhead Turtle v. County Council of Volusia County, Fla.*, 148 F.3d 1231, 1247–55 (11th Cir. 1998); *see also Strahan v. Coxe*, 127 F.3d 155, 158, 163 (1st Cir. 1997).

II. Industrial Wastewater Treatment Plant – Outfalls 001 and 002, and the Bleach Plant Monitoring Point.

The Weyerhaeuser mill discharges paper pulp production process wastewater from Outfalls 001 and 002. Ecology fails to: (1) explain why certain technology-based pollution control standards apply to different processes at the mill,² and (2) ensure that the technology-based permit limits meet Washington's AKART standard.

¹ Because these pollutants affect aquatic life in an additive or accumulative manner, the water-quality based effluent limit for 2,3,7,8 TCDD (derived from the dioxin TMDL) alone may not sufficiently protect designated and existing beneficial uses.

² For instance, it is not immediately apparent why part of the thermo-mechanical pulp discharge from NORPAC is subject to NSPS while part is subject to BPT. *See Fact Sheet* at Table 26. In the interest of clarity, Ecology should briefly explain why certain technology-based standards (i.e. NSPS, BPT, or BAT) apply to each of the different processes at the Kraft Mill and NORPAC.

1. Washington’s AKART Requirement Applies in Addition to Technology-Based Effluent Limitations from EPA’s Effluent Guidelines.

Every NPDES permit issued by Ecology must require, at least, the permittee to apply “[a]ll known, available, and reasonable methods of prevention, control, and treatment” to decrease pollution discharges. WAC 173-216-110(1)(a); WAC 173-216-020(1). This standard, commonly called “AKART,” is the underlying legal standard for technology-based effluent limits in NPDES permits issued by Ecology. Accordingly, unless water quality concerns dictate stricter effluent limits, each effluent limit in Weyerhaeuser’s Draft Permit must comply with the AKART standard. Ecology did not analyze whether many of Weyerhaeuser’s proposed technology-based effluent limits constitute AKART, or Ecology did not describe those analyses in the Fact Sheet. These omissions deprive Riverkeeper and the public of the opportunity to comment on whether the Draft Permit’s terms satisfy the applicable state and federal legal requirements.

Compliance with permit limits derived from federal effluent guidelines does not ensure compliance with Washington’s AKART requirement, even though parts of the AKART analysis mirror parts of the Environmental Protection Agency’s (EPA) methodology for setting effluent guidelines. See Ecology, *Water Quality Program Permit Writer’s Manual* (2011) at IV-26 (“AKART may be equivalent to the federal effluent guidelines or may be more stringent.”). Even after applying effluent guidelines when writing the permit, “there is another decision to be made” Ecology, *Water Quality Program Permit Writer’s Manual* (2011) at IV-6. “The decision is whether the effluent guidelines also constitute all known, available and reasonable methods of treatment (AKART).” *Id.* “If the effluent guidelines are over 10 years old, the permit writer should, at the minimum, conduct an analysis of unit processes design and efficiencies at the facility to determine if the effluent guidelines constitute AKART.” *Id.* If the technological and economic bases for the effluent guidelines applicable to Weyerhaeuser’s facility in 40 C.F.R. § 430 are outdated, Ecology must reassess whether the proposed technology-based effluent limits derived from EPA’s effluent guidelines constitute AKART.

The federal effluent guidelines that Ecology relied on when proposing technology-based effluent limits in the Draft Permit appear to be several decades old. The new source performance standards (NSPS) that Ecology used to propose effluent limits for BOD and TSS from bleached paperboard and wet lap pulp production at the kraft mill, and bleached kraft pulp at NORPAC, appear to have been promulgated by EPA in 1977 or 1982. See 40 C.F.R. § 430.25(a); see also 63 Fed. Reg. 18504, 18568 (April 15, 1998). The NSPS standards for BOD and TSS from de-ink newsprint pulp production, and the best practicable control technology (BPT) and NSPS standards for BOD and TSS from thermo-mechanical pulp production at NORPAC, which Ecology used to propose permit limits were apparently promulgated in 1982. 40 C.F.R. §§ 430.72, 430.74, and 430.95; 47 Fed. Reg. 52006 (November 18, 1982); see also 63 Fed. Reg. 18504. The best available technology (BAT) standards that Ecology used to propose limits for AOX, Chloroform, and TCDF from unbleached kraft pulp production appear to have been set in 1998. 63 Fed. Reg. at 18512. None of these technology-based effluent guidelines were developed in the last fifteen years.

The Draft Permit and Fact Sheet do not mention, let alone demonstrate, whether EPA’s effluent guidelines for AOX, Chloroform, and TCDF are equivalent to AKART. As discussed above, EPA’s technology-based effluent guidelines for these pollutants are roughly 15 years old. Ecology’s guidance instructs Ecology to re-assess whether new pollution reduction technologies have become “known,” “available,” and “reasonable” in the last 15 years. Ecology, *Water Quality Program Permit Writer’s Manual* (2011) at IV-6. Because AKART is Washington’s standard for technology-based permit limits, Ecology is legally required to consider whether the 1998 effluent guidelines for AOX, Chloroform, and TCDF actually constitute AKART. See RCW 34.05.570(3)(c), (f).

Ecology should also revise the Fact Sheet’s AKART analysis for BOD and TSS discharges from Outfalls 001 and 002. Ecology’s AKART discussion, on page 35 of the Fact Sheet, does not explain why pollution limits based on 40-year-old technology and economic considerations provide the same level of pollution reduction as would all currently ‘known, available, and reasonable methods of pollution prevention, control, and treatment.’ While Ecology mentions the AKART standard in relation to BOD and TSS discharges from Outfalls 001 and 002, it appears that Ecology summarily concluded that EPA’s effluent guidelines constituted AKART.³ This is not the process for determining AKART, and certainly does not follow Ecology’s guidance, which instructs that “the permit writer should, at the minimum, conduct an analysis of unit processes design and efficiencies at the facility to determine if the effluent guidelines constitute AKART.” Ecology, *Water Quality Program Permit Writer’s Manual* (2001) at IV-6. The effluent guidelines are the beginning of the AKART analysis, not the end. Ecology must determine whether the 1982 effluent guidelines for BOD and TSS actually satisfy AKART. See RCW 34.05.570(3)(c) & (f).

Ecology should conduct an AKART analysis for dioxin⁴ and explain the results of that analysis in the Fact Sheet. If an applicable technology-based limit—like an AKART-based limit—would be more restrictive than a water quality-based limit, the permit must impose the technology-based limit. “This is the basic philosophical approach found in the Clean Water

³ The Fact Sheet states:

EPA has developed effluent guidelines for the pulp and paper industry based on the pollution control practices and technologies available at the time the guidelines were established. The development of these technology-based effluent guidelines for the industry evaluated both manufacturing and waste treatment variability. The test procedures for BOD5 and TSS also have a great deal of variability in their results when comparing different laboratories or different technicians performing the tests. To account for this variability, a statistical assessment of the performance variability for adequately designed and well operated treatment systems was utilized to yield the daily maximum allowance and the 30-day average allowance for BOD5 and TSS for the relevant subcategories.

Therefore, in consideration of the above facts, Ecology has concluded that the proper operation and maintenance of the primary and secondary treatment design at Weyerhaeuser Longview is equivalent to AKART for conventional pollutants.

Weyerhaeuser Fact Sheet at 35.

⁴ Dioxins are extremely toxic chemicals, and bleached craft pulp mills like Weyerhaeuser’s are principle point sources for dioxins.

Act.” Ecology, *Water Quality Program Permit Writer’s Manual* (2011) at IV-28. The proposed effluent limit for dioxins appears to be a water quality-based effluent limit derived from Weyerhaeuser’s maximum daily load allocation in the Columbia River dioxin TMDL. *Fact Sheet* at Table 28. If an AKART-based dioxin limit would be more stringent than the TMDL-based limit, the AKART-based limit must apply. At a minimum, Ecology’s revised Fact Sheet should explain why an AKART-based effluent limit for dioxin would be less restrictive than the TMDL-derived, water quality-based limit.

Finally, the application of AKART to a discharge is a pre-requisite for authorizing a mixing zone. WAC 173-201A-400(2) (“A discharger shall be required to fully apply AKART prior to being authorized a mixing zone.”). Because the Weyerhaeuser mill relies on mixing zones to meet water quality standards, Ecology’s AKART determinations have significant implications for both the water quality- and technology-based effluent limits applicable to the facility.

2. Best Management Practices Plan for Controlling Spent Pulping Liquor, Soap, and Turpentine.

Riverkeeper supports Ecology’s determination that Weyerhaeuser is subject to the EPA’s narrative effluent guidelines for the management, spill prevention, and control of spent pulping liquor, soap, and turpentine at bleached kraft pulp mills as described at 40 C.F.R. § 430.03. *See Draft Permit* at S9. However, Riverkeeper and the public should have the opportunity to review and comment on a draft of the Best Management Practices (BMP) plan. 40 C.F.R. § 430.03(d); *Waterkeeper Alliance, Inc. v. United States EPA*, 2005 U.S. App. LEXIS 6533, *38–*43 (2d Cir. Feb. 28, 2005). Moreover, because the terms of the BMP plan constitute non-numeric or narrative effluent limits, the terms of the BMP plans should be included in the permit. *See Waterkeeper Alliance, Inc. v. United States EPA*, 2005 U.S. App. LEXIS 6533, *36–*38 (2d Cir. Feb. 28, 2005).

Public comment would strengthen the BMP plan and enhance public understanding of the pollution control requirements in place at the Weyerhaeuser mill. The BMP plan will contain a detailed engineering review of the facility, specify the procedures and practices by which Weyerhaeuser will meet various BMP standards, and explain the required monitoring program. 40 C.F.R. § 430.03(d)(1). This plan has a direct effect on the pollutants in the mill’s discharges because the “materials controlled by these practices, if spilled or otherwise lost, can interfere with wastewater treatment operations and lead to increased discharges of toxic, nonconventional, and conventional pollutants.” 63 Fed. Reg. 18504, 18561. The BMP plan will contain new and important information, and create substantive requirements for Weyerhaeuser’s operations. Riverkeeper and the public should be allowed to review and comment on a draft BMP plan; please re-open the public comment period and allow the public to review the draft BMP plan.

Finally, as this is evidently the first iteration of the WA0000124 NPDES permit where Weyerhaeuser has been required to implement 40 C.F.R. § 430.03, and because the applicable implementation deadlines have passed, the permit should clarify that, upon issuance of the permit, Weyerhaeuser must *immediately* comply with all BMP requirements. *See* 40 C.F.R. § 430.03(j)(1).

3. Sediment Discharges from the Intake Water Treatment System.

Riverkeeper supports Ecology's consideration of effluent limits for sediment discharges from Weyerhaeuser's raw water treatment system. Riverkeeper has several comments on the development and application of such limits.

First, the Draft Permit and Fact Sheet point to elevated sediment load in the mill's intake water resulting from the St. Helens eruption to justify the lack of AKART-based effluent limits for TSS discharges from the raw water treatment system. The Fact Sheet should compare the suspended sediment load in the intake water before and directly after the St. Helens eruption with the current suspended sediment load.

Second, the permit should contain effluent limitations sufficient to prevent sediment discharges from the raw water filtration system from degrading existing beneficial uses and violating numeric and narrative water quality standards. Page 48 of the Fact Sheet explains that the water quality standards for turbidity "may be exceeded during filter plant backwash and/or filter plant sedimentation basin wash outs." That statement appears to contradict the statement on page 42 that asserts: "Ecology conducted a reasonable potential analysis . . . for each pollutant and concluded the discharge/receiving water mixture will not violate water quality criteria outside the boundary of the mixing zone if permit limits are met." If Ecology conducted a Reasonable Potential Analysis (RPA)⁵ on the impacts of discharges from the raw water treatment plant that shows a potential to violate water quality standards, Ecology should clearly explain that RPA and its results in the Fact Sheet. If Ecology did not conduct an RPA accounting for these sediment discharges, Ecology should conduct this analysis because TSS is obviously a pollutant of concern at the facility. Regardless of Ecology's intent to study and potentially implement AKART, Ecology must set water-quality based effluent limits to ensure that sediment discharges from the water filtration system meet the applicable water quality standards. WAC 173-201A-510(1) ("Waste discharge permits . . . must be conditioned so the discharges authorized will meet the water quality standards."); *see also* 40 C.F.R. § 122.44(d)(1)(i).

Third, Weyerhaeuser's decades-old practice of concentrating, amassing, and discharging trapped sediments (and added pollutants like alum) does not constitute AKART. Ecology's guidance and past practice dictate that "[t]he discharge of pollutants already captured does not meet the intent of AKART." Ecology, *Water Quality Program Permit Writer's Manual* (2011) at IV-26, IV-34, *citing Ecology's arguments in* Pollution Control Hearings Board, Case No. 85-218. Under Ecology's own reasoning, the practice of discharging trapped sediment and other incorporated pollutants from the intake water treatment plant does not constitute AKART, and the proposed extensive study period is thus unnecessary.

Fourth, Riverkeeper protests both the schedule and procedure for the AKART study proposed at section S12 of the Draft Permit. The proposed process for studying, determining, and implementing AKART limits public review and participation. If Ecology proposed

⁵ The point of compliance for an RPA regarding these discharges should be the end of the pipe, not the edge of the mixing zone, because the permit does not apply AKART for this discharge, which is a pre-requisite for Ecology to authorize a mixing zone. WAC 173-201A-400(2).

AKART-based limits for sediment discharges from the filtration system in this Draft Permit, the public would be able to review and comment on the AKART determinations and resulting effluent limits. By merely proposing an AKART study, Ecology once again delays setting actual effluent limits on these discharges, and deprives the public of a chance to comment on this important analysis in the context of permit renewal. Public scrutiny and comment is especially important if Ecology intends to delegate the AKART study and analysis to Weyerhaeuser, the permittee.

Finally, Ecology should explain its legal authority for not proposing and setting AKART-based effluent limits for sediment discharges from the raw water treatment system in this Draft Permit and Fact Sheet. Ecology's rules require that "[a]ny permit issued by the department shall apply ... [a]ll known, available, and reasonable methods of treatment" WAC 173-220-130(1)(a). Allowing discharges to continue while Weyerhaeuser merely studies AKART for several years does not appear to meet this standard. Additionally, if Weyerhaeuser is not currently applying AKART, Ecology may not authorize mixing zones for these discharges. WAC 173-201A-400(2).

III. Outfalls 003 and 004

Outfalls 003 and 004 discharge to the Consolidated Diking Improvement District (CDID) Ditch #3. These outfalls drain a significant portion of Weyerhaeuser's facility and discharge a mixture of stormwater, equipment and facility wash water, dust control water, and cooling water. Weyerhaeuser has discharged to CDID Ditch #3 with essentially no effluent limits for the past several decades. As a result of similar industrial discharges, the CDID Ditch #3 is water-quality limited for dissolved oxygen, and a 'water of concern' for turbidity and bacteria pollution, according to Ecology's 2012 303(d) list.

Riverkeeper supports Ecology's recognition that AKART pollution-control measures should apply to discharges from Outfalls 003 and 004. However, Riverkeeper disagrees with Ecology's proposed approach for setting and implementing AKART-based effluent limits for these outfalls. The proposed permit at Section S14 gives Weyerhaeuser has 1.5 years from the effective date of the permit to complete an AKART study for Outfalls 003 and 004, after which time Ecology will set AKART-based effluent limits and a compliance schedule (of unknown duration) for meeting those limits.

Ecology should set AKART-based effluent limits for Outfalls 003 and 004 in this proposed permit. The proposed process for setting AKART-based effluent limits appears to shield the decision and process from public review. Riverkeeper appreciates that preparing these documents and studies is resource- and time-intensive. But those plans and studies should have been prepared—by Ecology or Weyerhaeuser—sometime in the five years since 2009, when the previous version of the WA0000124 permit expired. The process for deciding on AKART and setting permit limits is at the very heart of the permit-writing process and deserves the highest level of public involvement and scrutiny. Piecemealing these studies out over the years will discourage, and perhaps entirely prevent, public review and input. Public scrutiny and input is especially important if Ecology intends to delegate the AKART study and analysis to

Weyerhaeuser. At the very least, the permit should expressly guarantee an opportunity for public comment when Ecology proposes the new AKART-based effluent limits.

Additionally, Ecology should explain its legal authority for not proposing and setting AKART-based effluent limits for discharges to CDID Ditch #3 in this Draft Permit. Ecology's rules require that "[a]ny permit issued by the department *shall apply* . . . [a]ll known, available, and reasonable methods of treatment" WAC 173-220-130(1)(a) (emphasis added). Allowing Weyerhaeuser to discharge for several years without actually applying AKART does not appear to meet this standard.

However Ecology decides to apply AKART-based limits, Ecology must also ensure that discharges from Outfalls 003 and 004 meet the applicable water quality standards and, if necessary, set water quality-based effluent limits. WAC 173-201A-510(1) ("Waste discharge permits . . . must be conditioned so the discharges authorized will meet the water quality standards."). Ecology should begin by analyzing whether discharges from Outfalls 003 and 004 will meet water quality standards by conducting a RPA, *see Ecology, Water Quality Program Permit Writer's Manual* (2011) at VI-30, or other appropriate calculation. WAC 173-220-130(2). Ecology should conduct this investigation for each pollutant that is anticipated to occur in the discharge from Outfalls 003 and 004, but with particular attention to BOD, turbidity, dissolved oxygen, and nutrient loading, because those pollutants appear to be contributing to water-quality impairments in CDID Ditch #3. If any pollutant contained in the discharges has a reasonable potential to violate a numeric or narrative water quality standard, Ecology must set a corresponding water quality-based effluent limit.⁶ 40 C.F.R. 122.44(d)(1)(i).

Riverkeeper requests that Ecology re-issue the Fact Sheet and Draft Permit for public comment after calculating and implementing AKART-based effluent limits and any necessary water quality-based effluent limits based on the RPA for Outfalls 003 and 004.

IV. Industrial Stormwater

As a large industrial facility with associated lumber processing, log barking, and log decking, the Weyerhaeuser mill has the potential to discharge significant quantities of contaminated stormwater. "Stormwater runoff from the built environment remains one of the great challenges of water pollution control, as this source of contamination is a principal contributor to water quality impairment of waterbodies nationwide."⁷ Accordingly, Riverkeeper invests significant organizational resources in reducing stormwater pollution to the Columbia River and its tributaries. Generally, Riverkeeper supports Ecology's proposed permit conditions that more closely align stormwater management at the Weyerhaeuser Longview mill with the requirements of Washington's 2012 Industrial Stormwater General Permit (ISGP).

⁶ When calculating water-quality-based effluent limits for Outfalls 003 and 004, the point of compliance will be the end of the pipe, because no mixing zone is allowed until AKART has been implemented. *See Fact Sheet* at 40.

⁷ National Research Council, *Urban Stormwater Management in the United States* (Oct. 15, 2008), available online at: http://www.epa.gov/npdes/pubs/nrc_stormwaterreport.pdf.

The core requirements of the ISGP are (1) tiered corrective actions in response to benchmark exceedences and (2) the creation and implementation of an industry- and facility-specific Storm Water Pollution Prevention Plan (SWPPP). While the proposed permit requires corrective actions and a SWPPP, a few revisions would provide clearer and more enforceable stormwater controls.

First, Weyerhaeuser's permit should fully incorporate by reference Sections S8 and S9 of the ISGP. Without fully incorporating the documentation and reporting requirements of these sections of the ISGP, enforcing the corrective action requirements of Weyerhaeuser's permit will be difficult for Ecology, and nearly impossible for citizens. Section S1.B. of the Draft Permit does require Weyerhaeuser to "take" the tiered corrective actions required by ISGP Section S8, but it is unclear whether the Draft Permit requires Weyerhaeuser to document the corrective actions it takes, as would be required of an ISGP permittee. *See, e.g.*, 2012 ISGP at S8.B.2 (requiring permittees to "Summarize the Level 1 Corrective Actions in the Annual Report (Condition S9.B)."). Additionally, the Draft Permit creates no requirement for Weyerhaeuser to submit documentation similar to the "Annual Reports" required by ISGP Section S9.B., which detail a permittee's corrective actions over the previous monitoring year. Unless the permit explicitly requires Weyerhaeuser to document and report each corrective action responding to a stormwater benchmark exceedence, Ecology and citizens will not know whether Weyerhaeuser is taking corrective actions—the key requirement for stormwater pollution reduction in the permit.

Second, the public should have the opportunity to review and comment on a draft SWPPP. A SWPPP is a comprehensive document that controls how stormwater pollution will be managed, reduced, and monitored at a facility. Weyerhaeuser operates a large and complex facility, and this will be the first SWPPP prepared for the site; the SWPPP would almost certainly benefit from public review, insight, and comments. Also, because Weyerhaeuser will be required to "implement" its SWPPPs (*Draft Permit* at Section S8), the language of the SWPPP will create enforceable requirements for how Weyerhaeuser manages stormwater. The public should have the same opportunity to comment on these important requirements as any other requirements in the Draft Permit, such as technology-based effluent limits. Accordingly, Riverkeeper requests that Ecology ask Weyerhaeuser to prepare a draft SWPPP and that Ecology re-open the public comment period to allow comment on the draft SWPPP.

V. Anti-Backsliding

Generally, effluent limits in a new version of a NPDES permit must be at least as stringent as those in the previous version of that permit. *See* 40 C.F.R. § 122.44(l)(1). This requirement is commonly referred to as the Clean Water Act's "anti-backsliding" rule. *See* Ecology, *Water Quality Program Permit Writer's Manual* (2011) at II-23. Some of the effluent limits in the Draft Permit appear less stringent than the limits in the previous version of the WA0000124 permit, but the Fact Sheet does not explain why these less-stringent limits fall under any of the exceptions to anti-backsliding.

First, Table 24 of the Fact Sheet states that the previous version of the permit allowed a monthly average of 26,570 lbs of BOD per day, and a daily maximum of 49,666 lbs of BOD per

day, from Outfalls 001 and 002. The new effluent limits proposed in the Draft Permit would increase the BOD limits to a monthly average of 26,921 lbs of BOD per day, and a daily maximum of 50,249 lbs of BOD per day. *See Draft Permit* at 8. At face value, this increases the monthly average and daily maximum BOD effluent limits.⁸

Second, Table 24 of the Fact Sheet indicates that the previous version of the permit contained mass-based total daily limits for BOD and TSS discharges from the sanitary wastewater treatment plant, in addition to concentration-based limits. The Draft Permit eliminates these mass-based limits entirely. *See Draft Permit* at 11. If relaxing an effluent limit is not permitted, then completely eliminating an effluent limit is surely also illegal, and constitutes impermissible backsliding. Also, Ecology should explain its reasons for eliminating the mass-based (or total) BOD and TSS effluent limits on discharges from the sanitary wastewater treatment plant.

The Fact Sheet does not appear to address how the proposed effluent limits discussed above satisfy the anti-backsliding rule. Ecology's final permit and Fact Sheet should set these effluent limits at levels consistent with the effluent limits in the previous version of the permit, or explain why the proposed limits comply with the anti-backsliding rule, or explain which of the anti-backsliding exemptions, 40 C.F.R. § 122.44(1)(2)(i), Ecology believes applies.

Conclusion

In closing, Riverkeeper reiterates its requests that Ecology re-issue the Fact Sheet and Draft Permit for additional public comment to address the concerns of Riverkeeper and other commenters. Riverkeeper is deeply concerned about the impacts of the Weyerhaeuser Longview mill on the Columbia River. Please contact me at miles@columbiariverkeeper.org to schedule a meeting to discuss the issues raised in the public comment. We look forward to Ecology's responses and hope that the renewed permit will help create a clean and safe Columbia River.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Miles Johnson', with a long horizontal flourish extending to the right.

Miles Johnson
Clean Water Attorney
Columbia Riverkeeper

⁸ Increases in mass-based, production-normalized limits might not violate the spirit of anti-backsliding if Ecology forecasted average production at the facility to increase during the next permit term. But there is no indication that Ecology expected increased production, and even if it did, this does not explain why the production-normalized limits on TSS, AOX, and other pollutants did not increase correspondingly. *See Fact Sheet* at Table 24.

cc via email:

- Taylor Aalvik, Director of Natural Resources Department, Cowlitz Indian Tribe.
- McClure Tosch, Remediation and Restoration Specialist, Fisheries Resource Management Program, Yakama Nation.
- Jeff Fisher, Lower Columbia/Washington Coast Branch Chief, National Marine Fisheries Service.
- Karen Burgess, NPDES Permits Unit - State Oversight Lead, U.S. Environmental Protection Agency.