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20-2-02539-34  
ORGMT 48  
Order Granting Motion Petition  
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FILED  
SUPERIOR COURT  
THURSTON COUNTY, WA

2022 JAN 13 PM 3:11

LINDA MYHRE ENLOW  
THURSTON COUNTY CLERK

**SUPERIOR COURT OF WASHINGTON**

**IN AND FOR THURSTON COUNTY**

**CITY OF TACOMA, BIRCH BAY WATER AND SEWER DISTRICT, KITSAP COUNTY, SOUTHWEST SUBURBAN SEWER DISTRICT, and ALDERWOOD WATER & WASTEWATER DISTRICT, Municipal Corporations and Political Subdivisions of the State of Washington,**

**Petitioners,**

**v.**

**STATE WASHINGTON, DEPARTMENT OF ECOLOGY,**

**Respondent.**

Case No. 20-2-02539-34

**ORDER GRANTING PETITION FOR JUDICIAL REVIEW AND DECLARATORY JUDGMENT**

THIS MATTER having come before the Court on November 19, 2021 on a Petition for Judicial Review and Declaratory Judgment.

The Court considered the following pleadings in addition to the agency record below and any supplements:

1. Petition for Judicial Review and Declaratory Judgment with Attachments
2. First Amended Petition for Judicial Review and Declaratory Judgment
3. Respondent State of Washington, Department of Ecology's Answer to First Amended Petition for Judicial Review and Declaratory Judgment
4. Petitioner's Opening Brief
5. Respondent Department of Ecology's Brief
6. Petitioner's Reply Brief

1 7. Petitioner's Reply Brief-Cited Portions of Administrative Record

2 8. Respondent Department of Ecology's Statement of Additional Authority

3 9. Petitioner's Supplemental Briefing

4 The Court having considered the certified record, the briefs and pleadings filed by the  
5 parties and the authorities therein, the argument made by the parties at the hearing, and the  
6 briefs filed in response to the published opinion in *Northwest Pulp & Paper Ass'n v. Dep't of*  
7 *Ecology*, No. 55164-I-II 2021 WL 5898141 (Div. II, Dec. 14, 2021) this Court hereby GRANTS  
8 RELIEF as follows:

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- 10 • The Court declares INVALID the Dissolved Oxygen (DO) standard Rule at page 20  
11 together with any related pages in the January 15, 2019 Boundary Scenarios Report  
12 as the adoption of a rule in violation of the procedural requirements for rulemaking  
13 under the Administrative Procedures Act (APA.)
  - 14 • The Court declares INVALID the DO Impairment Rule at pages 12, 60-62 together  
15 with any related pages of the January 15, 2019 Bounding Scenarios Report as the  
16 adoption of rules in violation of the procedural requirements for rulemaking under  
17 the APA.
  - 18 • The Court declares INVALID the "total inorganic nitrogen" (TIN) Cap Letter as the  
19 adoption of a rule in violation of the procedural requirements for rulemaking under  
20 the APA.
  - 21 • The Court declares INVALID the DO Standard Rule because it violates applicable  
22 federal and state law and thus exceeds Ecology's statutory authority and is arbitrary  
23 and capricious on that basis.
  - 24 • The Court declares INVALID the DO Impairment Rule because it violates applicable  
25 federal and state law and thus exceeds Ecology's statutory authority and is  
arbitration and capricious on that basis.

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- The Court declares INVALID the TIN Cap Letter because it violates applicable federal and state law and thus exceeds Ecology's statutory authority and is arbitrary and capricious on that basis.
  - The Court declares that Ecology may not use annual TIN loading limits on all municipal wastewater treatment plants discharging to Puget Sound in reviewing and conditioning general or individual National Pollutant Discharge Elimination System (NPDES) permits without complying with statutory rulemaking procedures.
  - Ecology is authorized to implement temporary procedures subject to finalization under proper rulemaking authority. As in *Hillis v. State, Dept. of Ecology*, 131 Wash.2d 373, 932 P.2d 139 (1997) "[w]hat priorities and procedures Ecology uses is within its discretion, after rule making has occurred." (RCW 34.05.350).

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### Decision

14 The Court agrees with the approach in *Hillis* and thus REMANDS to Ecology for  
15 consideration of the immediate adoption of temporary emergency rules while regular  
16 rule-making proceeds.

17 DATED: January 13, 2022

18  Per GR30  
19 JUDGE SHARONDA D. AMAMILO